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CASES ADJUDGED IN THE
UNITED STATES CUSTOMS COURT

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Customs

(C.D. 4603)

EISEMAN-LUDMAR CO., INC. *v.* UNITED STATES

Fur felts

Court No. 73-6-01552

Port of New York

[Judgment for defendant.]

(Decided July 9, 1975)

Barnes, Richardson & Colburn (*Richard C. King* and *Earl R. Lidstrom* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

BOE, Chief Judge: The merchandise concerning which the within cause of action relates is described on the commercial and special customs invoices as "fur felts," imported from Japan and entered at the port of New York on November 4, 1971, January 17, 1972 and November 1, 1972. Upon liquidation by customs officials the articles were classified by similitude under item 798.00, TSUS, at the rate of 12% or 10% ad valorem, derived, in turn, from item 124.60, TSUS, as modified by T.D. 68-9, providing:

Schedule 7, Part 14, TSUS

> Any article, not provided for elsewhere in these schedules:
> Which is similar in the use to which it may be applied to any article or articles enumerated in any of the foregoing provisions of these schedules as chargeable with duty:

798.00	Most resembling as to use a particular enumerated article chargeable with duty	The same rate of duty as the particular enumerated article which it most resembles as to use

Schedule 1, Part 5, Subpart B, TSUS

* * *	Skins bearing wool or hair of a kind described in subpart C of part 1 of schedule 3, raw or not dressed, if suitable for use as furs without the removal of the wool or hair from the skins (except removal resulting in an unsought residue of wool or hair incidental to processing of the skins for use as furs) and imported to be so used	* * *
* * *	Furskins of the silver, black, or platinum fox (including those of any fox which is a mutation, or type developed, from silver, black, or platinum foxes), whether or not dressed	* * *
	Other furskins, raw or not dressed, or dressed:	
	Dressed:	
	Dyed:	
124.60	Plates, mats, linings, strips, crosses, or similar forms	12% ad val. [or 10% depending upon the date of entry]

The plaintiff, however, having abandoned its alternative claim for classification under item 798.00, TSUS, by similitude, contends that the merchandise in question is properly classified as hair felt under item 790.23, TSUS, as modified by T.D. 68–9, providing:

Schedule 7, Part 13, Subpart A, TSUS

790.23	Hair felt, and articles thereof, not specially provided for	4.5% ad val. [or 4% depending upon the date of entry]

At the trial the following stipulations were entered into between respective counsel:

(1) That the plaintiff invoices the subject merchandise and merchandise identical in all material respects thereto upon its resale in the United States as No. AG 244 fur felts, Serial No. 1–1187–H.
(2) That the fibers composing the subject felts are obtained from rabbits. (R. 3–4.)

It has been established by statute as well as by rule of court that the burden rests upon the plaintiff to overcome the presumption of correctness which attaches to the classification made by the collector of customs. In so doing, the plaintiff must not only prove that the classification made by the collector is erroneous but also that the classification urged by the plaintiff is correct. Section 2635, title 28, U.S.C., as amended by the Customs Courts Act of 1970. *United States.* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970); *Atlantic Aluminum & Metal Distributors, Inc.* v. *United States*, 47 CCPA 88, C.A.D. 735 (1960).

It is further presumed that the collector of customs has found every fact to exist that is necessary to sustain the classification so made by him. *United States* v. *Marshall Field & Co.*, 17 CCPA 1, T.D. 43309 (1929).

Conceding that the imported merchandise in question is a felt made from fur, the plaintiff contends, however, that in the absence of any contrary legislative intent the common meaning of an *eo nomine* provision includes all forms of the article and that, accordingly, fur in the same manner as wool and bristle is included within the generic term, "hair". It further contends that the term "hair felt" as referred to in item 790.23, TSUS, thus in turn includes felt made from all forms and varieties of hair. Concluding its rationale, the plaintiff submits that the foregoing conclusion overcomes the presumption of correctness attached to the collector's classification.

This court is not in disagreement with plaintiff's contention that "hair" is a generic term. However, by the acceptance of that fact it does not follow, per se, that "hair felt," as referred to in item 790.23, TSUS, includes all felts made from any form or variety of animal hair and specifically the merchandise in question. The plaintiff's burden, indeed, is more onerous than to reach a conclusion of questionable logic through the use of syllogistic premises which are, in fact, *non sequitur*. No testimony or evidence with respect to the meaning or definition of the term "hair felt," nor a description of the manner in which it is manufactured nor any evidence as to its use in the manufacturing of hats or caps has been offered. From the plaintiff's single supporting witness, it appears that the principal evidence established consists of the facts that the felt in question (plaintiff's exhibit 1) was imported in strips of one piece 18″ in width and 45″ in length; that the merchandise is used to make United States Army officer caps and conforms to the requirements of army specifications relating to the fur felt to be used in the manufacture of such army caps (plaintiff's exhibits 2 and 3).

The defendant has submitted evidence describing in detail the provisions to which a rabbit pelt is subjected in order to produce a "hatters fur" used in the manufacture of fur felt hats. It appears that after certain preliminary steps involving the cleaning of the pelt and the shearing of the surface hair, the fur fibers remaining on the pelt are impregnated with an acid solution. These fur fibers, after undergoing such a "carroting" process, are clipped from the pelt and thereafter used in the manufacture of fur felt. It further appears that fur felt, also known as hatters fur, is the name commonly ascribed to that felt from which hats are manufactured.

Neither from the testimony or evidence adduced nor from a review of the present tariff schedules or prior tariff acts does it appear that the classification "hair felt" was intended to include "fur felt" used in the manufacture of hats or caps. Item 790.23, TSUS, has its derivation from paragraph 1525 of the Tariff Act of 1930 and paragraph 1426 of the Tariff Act of 1922 which referred to "hair felt, made wholly or in chief value of animal hair, not specially provided for." Despite the long continued inclusion of the term "hair felt" in successive tariff acts, no definitive description or meaning of the article has been made either in prior court decisions or elsewhere other than in discussions relating thereto found in the respective summaries of tariff information.

In the Summaries of Trade and Tariff Information (1968), Schedule 7, Vol. 8, p. 53, the following comment is noted:

> Hair felt is a coarse fabric generally made by matting or interlocking animal hair into compact sheets of various thicknesses by a combination of mechanical and chemical processes and the application of moisture and heat. Hair felt is produced also by the needle loom process by mixing hair with other fibers such as wool

> or jute. The great bulk of the U.S. output of hair felt is produced from cattle hair obtained from domestic tanneries. Hair felt has many uses, the principal ones being insulation in construction, padding in upholstering, and pads for polishing, for example, polishing color TV picture tubes and automobile glass. [See also summaries of Tariff Information (1948), Vol. 15, Part 3, pp. 40–41. Summary of Tariff Information (1921), relative to H.R. 7456, 67th Cong., p. 1142.]

From the foregoing comment it would appear that neither the description nor the use of "hair felt" bears little resemblance to the description or the use of "fur felt."

In the opinion of the court, several cases cited by the plaintiff do not serve to substantiate the construction sought to be placed thereon by the plaintiff.[1] It is true that in each of said decisions the appellate court, in effect, recognized that "hair" is a generic term and that fur, wool and bristle are varieties and types thereof. No attention, however, has been given to the further delineative reasoning expressed by the appellate court in its determination that the classification of a type of hair for tariff purposes may be dependent upon additional factors including length, quality and the use thereof. Thus in the case of *Bloomingdale Bros.* v. *United States*, 8 Ct. Cust. Appls. 104, T.D. 37221 (1917), our appellate court stated:

> * * * A true fur does not differ materially from a true wool, which, like fur, is a modified form of *hair* and is distinguished by its fine, soft, and curly nature and by pointed scales or plates attached to the filament. (See "Wool, Characteristics of," New International Encyclopedia.) Indeed, fur and wool, when separated from the skin, are substantially of the same nature and have no marked points of difference, with the exception, perhaps, that wool, as a usual rule, is of a longer staple than fur. * * * If the *hair* is so short that it is commercially unfit to be spun into yarn or for the making of textiles, and is chiefly employed in the making of *furs* or *fur* garments, or for other *fur uses*, it is that kind *of hair which is known as fur*, though it be taken from the back of a sheep. If, on the other hand, the hair possesses all the characteristics of fur, but is so long and of such quality that it can be spun into yarn and converted into cloth and is chiefly used for that purpose, it should be classified as a *wool* or as *hair other than fur*. * * * [P. 106.] [Emphasis added.]

From the record before us, therefore, it appears that the plaintiff has failed to meet the twofold burden of proof incumbent upon it. It has neither overcome the presumption of correctness which follows the classification of the customs collector nor has it established that the classification which it urges is correct. Accordingly, the claim sought by the plaintiff for the classification of the merchandise in

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[1] *Bloomingdale Bros.* v. *United States*, 8 Ct. Cust. Appls. 104, T.D. 37221 (1917); *American Bristle & Hair Drawing Co., Keer Maurer & Co.* v. *United States*, 59 CCPA 104, C.A.D. 1048, 458 F.2d 524 (1972) and *Ayres Bridges & Co. et al.* v. *United States*, 8 Ct. Cust. Appls. 87, T.D. 37201 (1917).

question under item 790.23, TSUS, is overruled and the cause of action is dismissed.

Let judgment be entered accordingly.

(C.D. 4604)

McDONNELL DOUGLAS CORP. *v.* UNITED STATES

Transportation equipment
(DC–9 airplane)

AMERICAN/FOREIGN GOODS RETURNED—CUSTOMS REGULATIONS—NONCOMPLIANCE—DRAWBACK UPON EXPORTATION—PREMATURITY OF PROTEST

A DC–9 jet airplane imported at Los Angeles, Calif. from Switzerland and classified in liquidation under TSUS item 694.40 as "airplanes" at the duty rate of 9% ad valorem assessed upon the plane's full value, is claimed by the importer to be dutiable at the assessed rate only upon the value of the plane's wings and empennage (tail section), the remaining components of the plane being of American manufacture, pursuant to TSUS items 804.00 and 800.00, and also to be subject to a drawback allowance following the subsequent exportation of the plane to West Germany.

Although it is admitted in the pleadings that the wings and empennage of the plane are of Canadian origin and the remaining components of American origin, evidence in the record discloses that the plane was entered by the importer as a foreign article under item 694.40, that the official papers fail to disclose the filing of documents required by the customs regulations in connection with the exemption of American goods upon their reimportation, and that the importer first abandoned the Temporary Import Bond method of bringing in Canadian-made wings and empennage assemblies for use in the production of planes to be exported to foreign countries in favor of the drawback method of bringing in such parts in response to so-called unfavorable Bureau of Customs rulings, but then reverted to the Temporary Import Bond method of importing such parts, and that the drawback entry covering the subsequent exportation of the involved DC–9 was liquidated February 4, 1972, and the protest containing a claim against the district director's refusal to allow drawback on the exportation of said plane was filed November 11,1971.

HELD, in the absence of compliance by the importer with the applicable regulations governing free entry of American goods reimported relief is not available to the importer as claimed under TSUS items 804.00 and 800.00, under the doctrine of long standing administrative practice, and under the doctrine of estoppel. And the Government's motion made at the trial to dismiss the drawback claim must be granted since the protest is premature as to that claim, having been filed before final liquidation of the drawback entry.

Court No. 72-6-01395

Port of Los Angeles

[Judgment for defendant.]

(Decided July 22, 1975)

Louis Lieber, Jr. and *B. David Freundlich*, attorneys for the plaintiff.
Glad, Tuttle & White (*Edward N. Glad* of counsel), co-attorneys for the plaintiff.
Rex. E. Lee, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the defendant.

RICHARDSON, Judge: This case involves the dutiable status of a DC–9 jet airplane imported at Los Angeles, California, under its own power in September, 1968, from Switzerland, and classified in liquidation under TSUS item 694.40 as modified by T.D. 68–9 as "airplanes" at the duty rate of 9 *per centum ad valorem* which was assessed upon the full value of the plane. The plaintiff-importer contends in this action that duty should have been assessed only on the value of the wings and empennage (tail section) of the plane per force of TSUS item 804.00, per force of a long established administrative practice not properly revoked prior to liquidation of the subject entry, per force of the doctrine of equitable estoppel, and also that a drawback allowance as applied for should have been paid following the subsequent exportation of the plane to West Germany.

The issues in this action were tried and submitted on the west coast before Judge Rao on January 24, 1974 and briefs thereafter filed by counsel. The chief judge, acting pursuant to rule 2.3(b) of the rules of this court, reassigned the case to this judge for the purpose of rendering a decision in the case on the record as submitted. And, acting pursuant to the reassignment order, this court has read the transcript of testimony, papers and briefs, and has examined the evidentiary exhibits in the case.

In the amended pleadings it is admitted, under the first of four causes of action, that the merchandise in issue consists of a DC–9 airplane, serial number 45787, that the wings and empennage of the plane were made in Canada of United States aluminum and originally imported into the United States under a temporary importation bond as provided for in item 864.05, TSUS, for further processing in the United States, that the remaining portions of the plane consist of fabricated components, the product of the United States, and that after further processing of the wings and empennage and assembly with the components made in the United States the plane was exported to Switzerland on June 25, 1967, to cancel the temporary importation bond covering the wings and empennage. And in the amended answer the defendant admits that the date of importation of the plane was September 8, 1968, that the entry papers were received on September 10, 1968, that entry was made on September 17,

1968, and that the plane was appraised for customs purposes at $2,902,101.31, net packed.

In issue under the first cause of action is the 12th allegation of the amended complaint that the like articles [not previously exported] to the Canadian-made wings and empennage of the plane had a dutiable value of $401,004.00, and the 17th allegation of said complaint that the plane has not been advanced in value or improved in condition by any process of manufacture or other means while abroad. Under this cause of action, as well as under the second and third causes of action, plaintiff claims that the 9 per cent rate of duty should be assessed only on the value of like wings and empennages not previously exported from the United States.

With respect to the 12th allegation of said complaint, Kenneth Kerr, an accountant and assistant to plaintiff's comptroller, testified at the trial (R. 66):

> Q. I show you Plaintiff's Exhibit 8 for identification and ask [sic] ask you if you are familiar with that?—A. Yes, sir; I am.
>
> Q. How did you become familiar?—A. I directed the putting together of these figures on this statement. This is a cost statement and represents our cost and pricing at our Douglas Aircraft Company plant in Canada.
>
> Q. Did you furnish this statement to U.S. Customs?—A. Yes; I did.

This cost statement was subsequently admitted into evidence as exhibit 8. With respect to the plane in issue the witness testified (R. 69):

> Q. Referring to Plaintiff's Exhibit 8, what do these various ship sets refer to that you have on there?—A. This exhibit reflects the cost element breakdown of the value of airplanes 28 through 200 as it relates—in column 1 here, which is in question, which includes ship 127. . . . It is the cost and pricing that was paid for these wings and subsequently presented to the Bureau of Customs as final pricing.

Exhibit 8 discloses that the final dutiable appraisement value of the wings, empennage, flap, and leading edge was $401,004 for ship sets 28 through 200 which included ship set 127, the one in issue. The witness Kerr also testified that according to studies he made for bank financing purposes he found that the United States content in a DC–9 was over 90 per cent of the aircraft.

With respect to paragraph 17 of the amended complaint, Donald Needle, plaintiff's traffic and customs manager, testified (R. 37–39):

> Q. Did you see the aircraft before it left the United States?—A. I didn't see the aircraft upon exportation.
>
> Q. Did you see it during the time it was being assembled?—A. I have seen it during assembly. I see many airplanes, but I didn't see it at exportation at Long Beach.

Q. When you saw it on its return what was its condition?—A. Its condition was that the original seats that were manufactured into it were not there but a subsequent set of U.S. seats were brought back only as cargo. . . . Also, the tires, as we know, upon importation had been retreaded. And under the entry we were asked to and paid duty on the added value, value added on the U.S. tires that were retreaded.

Q. Were there any other structural changes to this aircraft that you noticed?—A. No, not interiorly.

Q. Or exteriorly?—A. Not upon importation.

The foregoing constitutes the evidence relied upon by the plaintiff under the first cause of action for classification of the plane under TSUS item 804.00.

The applicable statutes read:

[classified]

Aircraft and spacecraft, and parts thereof:

*	* * * * * * *	
694.40	Airplanes	9% ad val.

[claimed]

Headnote 1, Schedule 8, TSUS:

> 1. . . . except as provided in headnote 3 to part 1 of this schedule, any article which is described in any provision in this schedule is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.

Headnote 1(c), Subpart A, Part 1, Schedule 8, TSUS:

> 1. The items in this subpart (except item 804.00) shall not apply to any article—
>
> * * * * * * *
>
> (c) manufactured or produced in the United States . . . under item 864.05 and exported under any provision of law.

Item 800.00, TSUS:

800.00	Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad	Free

Item 804.00, TSUS:

804.00	Articles previously exported from the United States which are excepted from free entry under any of the foregoing items by headnote 1 of this subpart and are not otherwise free of duty----	A duty (in lieu of any other duty or tax) equal to the sum of any duty and internal-revenue tax imposed upon the importation of like articles not previously exported, but in no case in excess of the sum of any customs drawback proved to have been allowed upon such exportation of the article and any internal-revenue tax imposed, at the time such article is entered, upon the importation of like articles not previously exported.

Headnote 1, Subpart C, Part 5, Schedule 8, TSUS:

1. The articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for

their exportation, within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years. . . . For purposes of this headnote, an aircraft engine or propeller, or any part or accessory of either, imported under item 864.05, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported.

Item 864.05, TSUS:

864.05	Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States)----------	Free, under bond, as prescribed in headnote 1

With respect to the evidence presented in support of the first cause of action, plaintiff argues (brief, pp. 10–11):

> The wings and empennages involved herein respond to the provisions of Item 804.00, TSUS, as articles previously exported from the United States which are excepted from free entry because they are articles manufactured or produced in the United States under Item 864.05 and exported under any provision of law. The remaining over 90 percent of the DC–9 involved herein does not fall under Item 804.00, TSUS. Instead, being products of the United States which have been returned from abroad without being advanced in value or improved in condition, they should receive free duty treatment under Item 800.00, TSUS.
>
> Therefore, duty as called for under Item 694.40, TSUS, as modified by T.D. 68–9, should have been taken only on the value at which the wings and empennage would have originally been appraised had not a T.I.B. entry been made under Item 864.05, which value was $401,004.00.

To this argument defendant responds (brief, p. 10):

> . . . Plaintiff is not entitled to tariff treatment of the wings and empennage of the imported aircraft under item 804.00, TSUS, as there has been no showing in law that such relief should be granted. The doctrine of constructive segregation, contended by plaintiff to be operative herein to effectuate a separation of foreign-made parts from the United States components, is not applicable to the case at bar, as it has been eliminated by the passage of the Tariff Schedules of the United States.

The court is of the opinion that plaintiff's claim under the first cause of action is not defeated by the asserted demise of the doctrine of constructive segregation. Whatever may be the status of the doctrine of constructive segregation under the TSUS in general, it is clear that insofar as TSUS items 804.00 and 864.05, and headnote 1(c), Subpart A, Part 1, Schedule 8, TSUS, are concerned, Congress contemplated that these provisions should operate in a manner which requires the separation of foreign components of an imported article from its domestic components for classification purposes. The legislative history of the language "(including processes which result in articles manufactured or produced in the United States)" which was added to 19 U.S.C.A., section 1308(1), the predecessor of item 864.05, TSUS, indicates that that language was added expressly to facilitate the importation of foreign airplane parts into this country for the domestic manufacture of airplanes which would then be exported to foreign countries. 1 U.S. Cong. & Adm. News '58, pp. 142–143; 2 U.S. Cong. & Adm. News '58, p. 2451. And the same history indicates that the language "Any article (A) manufactured or produced in the United States . . . under section 308(1) of this Act, and (B) exported under any provision of law . . ." was simultaneously inserted in subparagraph (e)(3) of paragraph 1615 of the Tariff Act of 1930, as amended, the predecessor of headnote 1(c), Subpart A, Part 1, Schedule 8, TSUS, as one of the "conditions designed to safeguard the revenue and the substantive purposes of the Tariff Act" in the event that the foreign article was reimported into the United States. 1 U.S. Cong. & Adm. News '58, p. 143; 2 U.S. Cong. & Adm. News '58, p. 2452.

Hence, it is obvious, in the light of legislative history, that if the foreign part is deemed to be exported from the United States as a component of another article, it was anticipated that the foreign part might subsequently be returned to this country in the same pos-

ture. Such appears to be the construction put upon the predecessor statutes by the customs service. See T.D. 55265(1) wherein free entry was accorded to the American components of a domestically manufactured airplane imported from abroad upon compliance with applicable regulations, while disallowing free entry to the foreign parts incorporated in the plane. And the draftsmen of the Tariff Schedules indicate that no significant changes in substance were intended to be made in these provisions. See Tariff Classification Study, Schedule 8, pp. 12, 79.

What defeats plaintiff's first cause of action in the opinion of the court is its failure to plead and prove compliance with applicable customs regulations in accordance with the requirements of T.D. 55265(1) and headnote 1, Schedule 8, TSUS, inasmuch as plaintiff's claim is, as observed by the trial judge at the outset, a claim for duty exemption for American goods returned to some extent (R. 3).

Headnote 1, Schedule 8, TSUS, which governs claims for duty exemption for American goods returned, among other things, mandates compliance with applicable regulations as a condition precedent to classification under TSUS item 800.00—the tariff provision relied upon by plaintiff under the first cause of action for duty exemption in conjunction with TSUS item 804.00, the dutiable provision for foreign parts. And the regulations affecting classification of American goods returned are contained in section 10.1(a) of the Customs Regulations (19 CFR 10.1(a)). Basically, these regulations require documentation of the American origin of the merchandise on the part of the importer at the time of entry in the form of the filing of (1) the foreign shipper's declaration, (2) the importer's declaration on customs form 3311, and (3) a certificate of exportation on customs form 4467. None of these documents are among the official papers which were received in evidence in this case. And there is no testimony in the record explaining their absence.

In fact, the entry papers reveal that the DC–9 was entered by the customs broker as a *foreign article* under TSUS item 694.40 even though a marginal notation on the entry itself indicates that the entered merchandise was of Canadian and USA origin.[1] As such, the district director merely classified the plane in liquidation as entered. Thus, it appears that the entrant was not even concerned with the requisite documentation for an American goods returned classifica-

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[1] *Cf. Import Export Service of New Jersey, The Babb Co.* v. *United States*, 37 Cust. Ct. 54, C.D. 1798 (1956) wherein a complete airplane imported from Canada was entered as two separate articles, i.e., a landplane, less engine, and an engine, for purposes of obtaining a duty exemption for the engine as American goods returned, pursuant to paragraph 1615(a), Tariff Act of 1930, as amended.

tion—a circumstance which rules out the classic waiver of documentation argument as a factor in the case.

It has long been settled that free entry of merchandise as American goods returned is a privilege which is available to the importer only upon compliance with applicable regulations unless compliance is waived. *Maple Leaf Petroleum, Ltd.* v. *United States*, 25 CCPA 5, T.D. 48976 (1937). In the *Maple Leaf Petroleum* case our appeals court said (pp. 8–9):

> Appellant's argument to the effect that the collector knew all the facts, and that for this reason the establishment of the identity of the merchandise exported and imported in accordance with the regulations was therefore unimportant, is devoid of merit. It has long been the sound policy of our Government that when such grants and privileges as those involved here were allowed in customs matters, they were granted only upon the condition that there should be a compliance with regulations to be prescribed by the Secretary of the Treasury. The party asking the special grant or favor, of course, would be required to make a showing of the essential facts required by the regulation to the collector at the time of entry and not in the way of evidence at some subsequent trail.

Since waiver of documentation is obviously not a factor in this case, it follows that plaintiff's failure to establish compliance with the applicable customs regulations is as fatal to the maintenance of the first cause of action under the TSUS as it would have been under the predecessor 1930 Tariff Act to which the holding in the *Maple Leaf Petroleum* case was addressed. See *George L. Walsh* v. *United States*, 61 Cust. Ct. 252, C.D. 3591 (1968).

Aside from the plaintiff's procedural deficiencies it has not on the record produced evidence to establish that the aircraft exported from the United States to Switzerland is in fact the same aircraft subsequently imported into the United States. Its witness Mr. Needle testified that he was not an engineer, that he did not see the aircraft in its completed condition prior to exportation to Switzerland, and he did not know if there were any repairs requiring replacement while the aircraft was in Switzerland.

With respect to the second cause of action in the amended complaint, plaintiff alleges in substance that the assessment of duty under TSUS item 694.40 upon the full value of the imported DC–9 was contrary to an established, uniform, and still outstanding [2] ad-

[2] Outstanding in the sense that there had been no seasonable promulgation of a contrary ruling prior to the entry of the plane in accordance with 19 U.S.C.A. § 1315(d) which states: "No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect tc the imposition of antidumping duties."

ministrative practice of assessing duty only upon the value of the foreign parts of an imported article, the remaining parts of which consist of American products—referring particularly to the ruling of the Commissioner of Customs dated November 18, 1960, and promulgated in 95 Treas. Dec. 492, 493 (T.D. 55265(1)). In the cited ruling the Commissioner states:

> . . . An airplane manufactured in the United States under section 308(1), Tariff Act of 1930, as amended, with the use of a foreign buffet and exported pursuant to section 308(1), is on return precluded from free entry under paragraph 1615(a) of the tariff act by paragraph 1615(e). The parts of such airplane which are of United States manufacture and which following C.D. 1628 may be constructively segregated, may be classified under paragraph 1615(a) with appropriate allowance of duty, upon compliance with the applicable regulations.

In support of this cause of action plaintiff argues in the brief (p.16):

> It is obvious that what was initially exported to Swissair was a brand new passenger DC–9 airplane and what was re-imported into the United States was a used passenger DC–9 airplane. Therefore, the American components in the DC–9 have not been advanced in value or improved in condition while abroad. . . . Therefore, the American components in the involved DC–9 fall squarely within the above ruling [T.D. 55265(1)].

And again, in this connection, plaintiff argues further in the brief (pp.18–19):

> The tariff provisions involved in T.D. 55265(1), *supra*, being paragraph 1615(a), 1615(e) and Section 308(1) of the Tariff Act of 1930, have all been re-enacted without change in item 800.00, item 804.00, item 864.05 and headnote 1(c) of Subpart A, Part 1 of Schedule 8, TSUS. Thus, where the statutory language involved in T.D. 55265(1) has been re-enacted in substantially the same language in TSUS, it can be presumed that Congress adopted this administrative construction. [Citations omitted.]

To this cause of action defendant responds in the brief, among other things (p. 21):

> In the case at bar, not one scintilla of evidence has been offered which would tend to demonstrate an established and uniform practice of allowing free entry of the American-made parts of an aircraft made with foreign-made parts imported under a temporary importation bond upon the aircraft's importation, requiring notice of change of practice. The only thing pointed to by plaintiff is the abstract of the ruling, and beyond that, nothing. . . . In any event, section 315(d) expressly requires that the Secretary *find* such a uniform and established practice before a

notice of change is required, and the Secretary has *not* so found, T.D. 55265(1) being a ruling of *prospective* impact rather than a finding as to *past practice.*

The second cause of action apparently proceeds upon the assumption that the district director was obliged to follow the ruling in T.D. 55265(1) and assess duty only upon the value of the wings and empennage of the imported DC–9 in accordance therewith, upon the mere emergence of facts revealing to him the Canadian origin of the wings and empennage and the domestic origin of the remaining components of the plane, and that his failure to follow this course of action constitutes a *change in practice* within the meaning of section 1315(d). However, the language of T.D. 55265(1) expressly provides that its application is conditioned upon *compliance with the applicable regulations.* And there is no allegation under this cause of action of compliance on the part of plaintiff with section 10.1(a) of the Customs Regulations—the applicable regulation involved in T.D. 55265(1) by virtue of 19 U.S.C.A., section 1201, paragraph 1615(h) (paragraph 1615(h), Tariff Act of 1930, as amended), and one which has been overlooked by plaintiff in its argument. Neither is there any evidence in the record of compliance with this regulation.

Thus, apart from the question of continuity of practice under T.D. 55265(1) [under the TSUS as well as under the predecessor tariff act] which is provoked in defendant's argument [3] that also presupposes an administrative *change in practice* has taken place, the evidence in the record falls short of establishing anything other than a change resulting from plaintiff's inability to invoke application of the existing practice authorized in T.D. 55265(1). Such a change does not constitute a *change in practice* within the meaning of section 1315(d), and, therefore, cannot be the basis for awarding relief to plaintiff under its second cause of action.

With respect to the third cause of action in the amended complaint, plaintiff alleges in substance that the wings and empennage of the imported plane were, upon their original importation into the United States, entered by plaintiff under TSUS item 864.05 in reliance upon the ruling in T.D. 55265(1) in lieu of importation under a drawback entry in which event duty would have been assessed only against the value of the wings and empennage upon reimportation of the plane and not as in this instance upon the full value of the plane, and that

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Cf. United States v. *Edward I. Petow & Son, etc.*, 34 CCPA 55, 64–65, C.A.D. 343 (1946).

by reason of plaintiff's reliance upon T.D. 55265(1) to its detriment defendant is estopped from denying the benefits of T.D. 55265(1) to plaintiff.

At the trial there was received in evidence as exhibit 4 during the testimony of the witness Needle a "Change in Policy" memorandum, dated March 12, 1969, which was distributed by plaintiff to company personnel, and a letter from the company president attached thereto. The letter, also dated March 12, 1969, states:

> An adverse ruling by the U.S. Treasury Department applicable to payment of duty on reimported products containing foreign-made components has imposed an abnormal expense on Douglas Aircraft Company and its customers. The ruling specifically affects the Company's costs in cases where we re-import used airplanes which contain any components made in foreign countries.
>
> To avoid this additional cost, it is necessary to change our method of duty payments to the "drawback" method (dutiable entry) and seek refund for [sic] duty upon exportation through the "drawback" procedure.
>
> The attached document sets forth the policies and procedures to be followed, effective with aircraft numbers DC–8 466 and DC–9 520, and from inception on the DC–10 program.
>
> In the event we are able to obtain administrative relief or retroactive legislature [sic], this policy will be amended at that time.
>
> JACKSON R. MCGOWEN,
> *President.*

And on page 1 of the attachment to the letter, under the heading "GENERAL – Import Duty", the following statement appears:

> Policies and procedures applicable to duty on components of our products procured from foreign countries where the imported materials or parts are to be exported as part of an aircraft are based on a "Temporary Import Under Bond" entry basis. This method has effected a savings to the Company as it allows for importation "duty free" of all products that are to be used in manufacturing an end product, where subsequently the end product is to be exported.
>
> Recent Bureau of Customs rulings have been unfavorable from a sales position for foreign customers when components of aircraft initially imported under "Temporary Import Bond" procedure might be re-imported into the United States at a later date. The current Bureau of Customs position on re-imported aircraft

where components have been originally brought into the United States under "Temporary Import Bond," is to assess the aircraft at full value. In order to eliminate the adverse effect on the resale of our products under these prevailing rulings, the drawback duty method will be used in lieu of the "Temporary Import Under Bond" method on all imported components in accordance with the following . . . .

It is admitted in the amended pleadings under the third cause of action [as well as under the second cause of action], however, that no subsequent ruling changing, modifying, amending, or explaining T.D. 55265(1) has been issued by the Commissioner of Customs by publication in the weekly Treasury Decisions or in the Federal Register. And, according to an internal policy memorandum subsequently distributed within the company, plaintiff reverted to its earlier practice with respect to the importation of foreign aircraft parts under item 864.05 (collective exhibit 3). Collective exhibit 3, dated May 16, 1972, states in part:

| Denotes Change
| N–New R–Revised

A. SUMMARY:

This procedure defines responsibilities for handling the importation of material secured from foreign entities and its subsequent exportation.

* * * * * * *

D. REGULATIONS:

* * * * * * *

R | 2. All aircraft components, excluding components for military designated aircraft, which are imported from foreign sources and which will become a part of the finished product exported to a foreign country, will be imported under the Temporary Import Bond method. Upon export of the aircraft, the TIB will be lifted.

* * * * * * *

12. If material which was originally produced in the United States, exported to a foreign country, and not "advanced in value" while there, is brought back into the United States, no duty is payable since this entry represents U.S. goods returned.

* * * * * * *

F. REFERENCES:
1. Authority
OMP DAC69-64 Change in Policy – Method of Receipt on Foreign Components

* * * * * * *

Jackson R. McGowen
President
Douglas Aircraft Company

In support of the third cause of action plaintiff argues (brief, pp. 21–22):

> The record clearly shows herein that plaintiff was aware to two methods that could be used in importing the unfinished wings and empennage from Canada that were to be finished and incorporated into a DC–9 that was going to be exported to a foreign carrier. . . .
>
> * * * * * * *
>
> Relying on the U.S. Customs interpretation, manifest in T.D. 55265(1), plaintiff chose the latter method of importing the wings and empennage in question. If U.S. Customs now adopts the view that there is a radically different result depending upon which method, i.e. drawback or item 864.05, TSUS, was used initially to import the unfinished wings and empennage, it is the duty of U.S. Customs to give notice to the public that T.D. 55265(1) is no longer applicable. Having not done so U.S. Customs cannot take advantage of its failure to act when plaintiff relied on the soundness of T.D. 55265(1). [Citation omitted.]

Defendant argues [reply brief] that the Government made no affirmative misrepresentations, and as such, plaintiff may not rely upon estoppel as a basis for relief.

In the third cause of action plaintiff invokes or attempts to invoke the doctrine of equitable estoppel as a basis for asking affirmative relief from the court. However, it has been recently said by our appeals court that this court lacks the jurisdiction necessary to entertain and award relief predicated upon equitable pleas. See *United States* v. *Torch Manufacturing Co., Inc.*, 62 CCPA 41, C.A.D. 1143 (1975), 509 F. 2d 1187, decided February 13, 1975 [Cust. Bull. Vol. 9, No. 10, page 23, at page 29]; *Quigley & Manard, Inc.* v. *United States*, 61 CCPA 65, 68, C.A.D. 1121, 496 F. 2d 1214 (1974).

But even assuming this court possessed equity jurisdiction it is clear that plaintiff has not made out a case on the instant record for

its application. Although plaintiff has shown reliance upon the ruling in T.D. 55265(1) in making the TIB entries of the foreign-made wings and empennage of the imported DC–9 in lieu of drawback entries, plaintiff has not shown any conduct on the part of the customs service which is inconsistent with the administrative ruling in T.D. 55265(1). It is admitted that the customs service made no formal ruling to countermand its ruling in T.D. 55265(1). And plaintiff has not pleaded or established compliance with the documentation requirements of said ruling in order to induce the customs service to invoke the ruling. Hence, any harm which plaintiff may have sustained by reason of not getting the benefits of T.D. 55265(1) cannot be attributed to conduct on the part of the customs service.

Moreover, while not articulated as such, it would appear that plaintiff's reversion to the TIB method of importing the foreign-made airplane parts following its abandonment of this method in favor of the drawback method is a reflection of its own awareness that the customs service was not the cause of its inability to obtain duty free entry of the parts of the imported DC–9 which are of American origin. For example, when one reads plaintiff's internal memoranda regarding its operating procedures, one notes a discernible lack of discussion or instruction concerning the preparation and filing of customs documents relating to the reimportation of American goods and parts.

For the reasons stated plaintiff cannot succeed in obtaining relief under its third cause of action.

The fourth cause of action in the amended complaint, dealing with a claim for a drawback allowance following the subsequent exportation of the imported DC–9 to West Germany, was the subject of a motion to dismiss on which decision was reserved by the trial judge. At the trial counsel for the defendant stated (R.5–6):

> MR. BABB: Before Mr. Glad proceeds, I have a motion which might go to one of the causes of action here, your Honor. I specifically refer to the fourth cause of action in the complaint, which essentially is plaintiff's claim for drawback here.
>
> As indicated on the drawback entry, your Honor, the drawback entry was liquidated on February 4, 1972. The protest in this case was filed on November 11, 1971. Under the law at that time, your Honor, the protest was required to be filed within a certain period after liquidation. And in this particular case the protest was filed before.
>
> I submit, therefore, the court has no jurisdiction to entertain the fourth cause of action, and accordingly, I move to dismiss the fourth cause of action in this case on the grounds that the protest, which is material to the jurisdiction of the court, is premature.

And in its brief defendant states, among other things (p. 27):

> It may be argued, as it was at trial, that the consumption entry herein shows the following in red ink, "(Drawback disallowed – tent. liq. 9–1–70) M.L."; that this was the official act of denying the drawback claim; and that the protest was filed, therefore, after the liquidation of the drawback entry. Defendant submits, assuming, *arguendo*, that this was the drawback liquidation, that the protest then is filed too late as it was required to be filed within 90 days after drawback was denied. If September 1, 1970 is to be considered the date of the drawback entry liquidation, the protest filed on November 11, 1971, is untimely also, and this cause of action should be dismissed.

Plaintiff did not respond to these particular arguments advanced by the defendant, either at the trial or in its briefs.

Examination of the official papers indicates that the chronology of events are as stated by defendant in its motion. The drawback entry received in evidence as exhibit A discloses that drawback entry No. 125927 filed at Los Angeles on September 8, 1969, was liquidated February 4, 1972 – "Disallowed Drawback Rate applies to parts only Aug 31 1970". And although the consumption entry notes that this disposition was a tentative liquidation as of September 1, 1970, it is clear that it is a *final liquidation* and not a *preliminary one* which sets into motion a statute of limitations governing the filing of a protest against the collector's refusal of a drawback claim. See *E. Fucini & Co., Inc.* v. *United States*, 4 Cust. Ct. 174, C.D. 317 (1940).

In the *Fucini* case, the first division of this court said (p. 178):

> The provisions for judicial review of administrative action provided by section 514 of the Tariff Act of 1930 are to be liberally construed to effect its main purpose and the time limitation for beginning suit thereunder is not to be applied artificially. Therefore, under the peculiar circumstances arising here which were outside the control of the plaintiff, a partial liquidation made by the collector upon an incomplete report to him by other officials is not to be construed as the final liquidation from which protest lies, but, upon a fuller, accurate report by the other officials to the collector of customs of additional taxes levied and paid while the goods were still in the plaintiff's warehouse, the filing of a new drawback entry to cover such excess is proper, and protest against the collector's refusal to refund such excess if made within 60 days after such subsequent refusal will be timely.

The plaintiff in this case had not filed a protest against the earlier and partial liquidation which was said by the Government to be final and conclusive against the plaintiff.

Inasmuch as the final liquidation of the drawback claim in the instant case took place on February 4, 1972, the protest filed November 11, 1971, on which the fourth cause of action rests, is premature insofar as the drawback claim is concerned since it was not filed within 90 days after liquidation as required by 19 U.S.C.A., section 1514(b)(2)(A) (section 514(b)(2)(A), Tariff Act of 1930, as amended by the Customs Administrative Act of 1970). As such, the court agrees with defendant that the court is without jurisdiction to entertain the fourth cause of action. Defendant's motion to dismiss the fourth cause of action is granted, and said cause of action is hereby dismissed.

Plaintiff having failed to sustain any of its causes of action for the reasons stated herein, this action must be dismissed. Judgment will be entered accordingly.

(C.D. 4605)

COLECO INDUSTRIES, INC. *v.* UNITED STATES

On Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment

Port of Ogdensburg, Court No. 73–8–02380 on games and game machines

[Plaintiff's motion granted.]

(Dated August 15, 1975)

Siegel, Mandell & Davidson (*Brian S. Goldstein* of counsel) for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

MALETZ, Judge: The question in these cross-motions for summary judgment is the proper tariff classification of a game called "Decision Football" that was imported from Canada via the port of Champlain, New York in 1972. Examination of the pleadings and an affidavit of plaintiff's corporate director of engineering establishes that there is no genuine issue of fact to be tried—and the parties so agree.

The customs decision complained of is the classification of the importation under item 734.15 of the tariff schedules, as modified by T.D. 68–9, with duty assessed at the rate of 10 percent ad valorem. More specifically, item 734.15, as thus modified, provides in part:

Chess, checkers, pachisi, backgammon, darts, and other games played on boards of special design, all the foregoing games and parts thereof (including their boards); * * *------	10% ad val.

Plaintiff in its complaint (par. seventh) alleges that "the merchandise in issue, in its condition as imported, though undisputedly a game played on a board of special design, is more specifically provided for under [i]tem 734.20" as modified by T.D. 68–9, and therefore dutiable at the lower rate of 5.5 percent ad valorem. Item 734.20, as so modified, reads as follows:

Game machines, including coin or disc operated game machines and including games having mechanical controls for manipulating the action, and parts thereof	5.5% ad val.

There being no dispute that the imported merchandise is a game played on a board of special design within the meaning of item 734.15, the issues are (1) whether the merchandise is a game machine or a game machine including a game having mechanical controls for manipulating the action, and therefore within the ambit of item 734.20; and (2) if the merchandise is within the description of both item 734.15 and item 734.20, which provision more specifically describes the merchandise.

Turning to the record, the pleadings and affidavits establish the following facts: Plaintiff is the importer of record of the merchandise covered by entry nos. 124833, 124832, 124821, and 126468. The entries were liquidated in November 1972 and the liquidated duties have been paid. A timely protest was filed by plaintiff, and the summons herein was timely filed after denial of the protest.

The imported merchandise, "Decision Football," is a game which enables each player involved, without the knowledge of the other player, to set up one of five football play decisions such as a long pass, a short pass, an option play, an outside run or an inside run. The plays are accomplished by each player rotating a gear wheel affixed to a moveable gear track which is part of a plastic rectangular frame situated below the playing surface. When the plays are set, each player engages a button lighting bulb, which is part of the electrical system (battery operated) of the game which is attached to the moveable gear track frame.

By reason of the above-described action, the players can review the results of their game strategy, i.e., yardage gained or lost as recorded on a red translucent screen which is illuminated by a bulb associated with the integrated electrical system.

An additional feature of the merchandise in question, without which the game could not be played, involves the use of the "Action Quarterback" at such times as a kick would be normal in a football game (i.e., on a kick-off, punt, conversion after touchdown, and field

goal). The ball is placed on the kicking tee near the right foot. The base of the player is held with one hand and with the other, the spring mechanism is manipulated in much the same manner as the spring mechanism on a pinball machine so as to project the ball in the direction of the goal posts.

Based upon the skill and dexterity of the particular player in manipulating the mechanical "Action Quarterback," the game tests the player's skill of manipulation and coordination and enables a player to compete for a high score or a win.

In this factual context, we consider first whether the merchandise is specifically provided for in item 734.20 as a game machine. On this score, the affidavit of plaintiff's affiant establishes that the "Decision Football" game contains a rudimentary analog computer; that it is a mechanical contrivance which utilizes, applies and modifies energy and force for the transmission of motion; that the inter-relationship of gears, input pinions, summing bar, summing points, slide, output indicator, input scale, electrical switches and circuit as operating moveable parts and the inter-related essential electrical system, qualify the game in issue as a machine within the scope of item 734.20.

The inter-related essential electrical system is worthy of note since it is that type of article, among others, which was intended for classification under item 734.20. Thus, the *Tariff Classification Study – Explanatory and Background Materials*, Schedule 7 (Nov. 15, 1960) p. 281, makes clear that item 734.20 was intended to provide, among other things, for game machines at the rate of duty of 13.75 percent ad valorem, the rate which was then applicable under paragraph 353 of the Tariff Act of 1930 to such game machines which contained as an essential feature an electrical element or device.

In view of the foregoing, it is concluded that "Decision Football" is a game machine within the scope of item 734.20.

Beyond this, by virtue of the issues raised by the parties in their briefs, the court deems it appropriate to determine whether, in addition to being a game machine, the imported merchandise comes within the provision of item 734.20 covering "Game machines * * * including games having mechanical controls for manipulating the action * * *." As to this, defendant asserts that "plaintiff has not established that the subject merchandise has mechanical controls for manipulating any 'action'." Brief, p. 5. It further asserts that "[p]laintiff cannot, realistically, rely on the spring-activated 'Action Quarterback,' an article which is of infrequent use and of merely incidental importance to the board game in issue, in order to establish the prerequisite to classification under 734.20, *supra*, mechanical manipu-

lation of action." *Id.*, p. 6. The argument, however, is devoid of merit. For as seen before, the record is uncontradicted that a feature of "Decision Football," without which the game could not be played, involves the use of the "Action Quarterback" at such times as a kick would be normal in a football game. Further, as discussed earlier, based upon the skill and dexterity of the particular player in manipulating the mechanical "Action Quarterback," the game tests the player's skill of manipulation and coordination and enables a player to compete for a high score or a win. The uncontradicted record, in short, is quite contrary to defendant's assertion that the "Action Quarterback" is of infrequent use and of merely incidental importance to the game. Moreover, it has previously been pointed out that the "Action Quarterback" has a manually operated spring mechanism which performs its function in much the same way as the spring mechanism on a pinball machine so as to project the ball in the direction of the goal posts.

Significant, in addition to the foregoing considerations, is the decision of the appellate court in *Mego Corp.* v. *United States*, 62 CCPA 14, C.A.D. 1137, 505 F. 2d 1288 (1974). In that case, the court in reviewing the scope of item 734.20 relating to the phrase "games having mechanical controls for manipulating the action," rejected the government's contention that the merchandise must be a "machine." In this connection, the court stated (505 F. 2d at 1290–1):

> * * * Appellee argues that the phrasing of item 734.20, "[g]ame machines, including coin or disc operated game machines and including games having mechanical controls for manipulating the action," requires that appellant's article be a "machine." However, the legislative intent derived from the Tariff Classification Study (1960) and the First Supplemental Report thereto (January, 1962) clearly was otherwise. The Study (Subpart D, Part 5 of Schedule 7) proposed the following provision for item 734.20 (p. 264):
>
> > Game machines, including coin or disc operated game machines . . . and parts thereof
>
> The First Supplemental Report recommended the following insertion before ", and parts thereof" (p. 80):
>
> > and including games having mechanical controls for manipulating the action
>
> The following comments accompanied this recommendation:
>
> > The proposed change in the definition of "toy" might cause a significant change in the existing treatment of certain hockey games imported in substantial volume from

> Canada. These games have simple, mechanical controls for manipulating the hockey players, but might not be regarded as a game "machine". The foregoing change in item 734.20, together with the change in headnote 1 of part 5E [to except games and other articles in items 734.15 and 734.20] . . . will insure that the existing treatment of these games will be substantially continued.

From all the foregoing, it is concluded that the imported merchandise comes within the scope of item 734.20 on two aspects—(1) as a game machine, and (2) as a game having mechanical controls for manipulating the action.

Lastly, since the merchandise in issue is described by both item 734.20 and item 734.15, it is incumbent upon plaintiff to establish which provision most specifically describes the merchandise. *Broderick & Bascom Rope Co.* v. *United States*, 59 CCPA 130, C.A.D. 1053, 460 F. 2d 1070 (1972); Tariff Schedules of the United States, *General Interpretative Rule* 10(c).

In this regard, the provision for game machines and games having mechanical controls for manipulating the action (item 734.20) is more specific than the catch-all provision for "*other* games played on boards of special design" [emphasis added] inasmuch as item 734.20 embraces requirements of classification more difficult to satisfy than item 734.15. See e.g., *Wilfred Schade & Co.* v. *United States*, 62 Cust. Ct. 138, 140, C.D. 3701, 295 F. Supp. 1117, 1119–20 (1969).

In conclusion, the court holds that the imported merchandise is properly classifiable under item 734.20. Therefore, plaintiff's motion for summary judgment is granted and defendant's cross-motion for summary judgment is denied. The district director at the port of Ogdensburg, N.Y. is directed to reliquidate the entries accordingly.

(C.D. 4606)

HUDSON SHIPPING CO., INC. *v.* UNITED STATES

Ship models and construction kits

Imported models purporting to be scale models of actual ships and construction kits for assembling ship models containing units purportedly prefabricated to the precise scale of certain actual ships, *held* properly classified by the government under item 737.15 as other models and construction kits.

ITEM 737.07—LEGISLATIVE HISTORY

The legislative history of item 737.07 shows that it was intended to cover carefully constructed scale replicas of actual prototypes manufactured according to strict standards and requirements.

COMMON MEANING OF THE TERM SCALE AS USED IN ITEMS 737.07 AND 737.09

The noun "scale" means a fixed or definite proportion which is used in determining the relationship of a representation to that which it represents.

ITEM 737.07—SHIP MODELS MADE TO SCALE OF THE ACTUAL ARTICLE

Plaintiff did not meet its burden of showing that the imported models were made to the scale of the actual ships and therefore its claim for classification of the models under item 737.07 is overruled.

ITEM 737.09—CONSTRUCTION KITS CONTAINING CONSTRUCTION UNITS PREFABRICATED TO PRECISE SCALE OF THE ACTUAL ARTICLE

Plaintiff did not meet its burden of showing that the construction kits consisted of construction units prefabricated to the precise scale of the actual ships they purported to represent and therefore its claim for classification of the construction kits under item 737.09 is overruled.

ITEM 737.07—CONSTRUCTION KITS

Construction kits or sets for making or assembling model articles are not provided for under item 737.07 and therefore plaintiff's alternative claim for classification of the kits under item 737.07 is overruled.

Court Nos. 68/4399, etc.

Port of New York

[Judgment for defendant.]

(Decided August 26, 1975)

Allerton deC. Tompkins for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

MALETZ, Judge: The problem in this consolidated action is to determine the proper tariff classification of three types of ship models in assembled form and of three types of construction kits or sets containing prefabricated units for the assembly of ship models. The imported ship models were represented to be models of three famous

sailing vessels, i.e., (1) the Juan Sebastian Elcano, a schooner which is presently used by the Spanish Navy as a training vessel; (2) the clipper ship Great Republic which was built in 1835 and was the largest sailing ship ever built in the United States; and (3) the Cruz del Sur (the Southern Cross) which is used by the Spanish Government as a training ship. The imported kits were represented to contain prefabricated units for construction of models of the Juan Sebastian Elcano; the Great Republic; and the Eagle, a famous windjammer, which was initially used as a training vessel by the German Navy, but was taken over in 1946 by the United States as a war reparation and has since been used as a cadet training ship of the United States Coast Guard.

The models and kits in question were manufactured by the Constructo Company of Barcelona, Spain (Constructo) and were imported into the United States via the port of New York in 1966 and 1968 by S. T. Preston & Son, Inc. of Long Island, New York (Preston).[1] Upon liquidation, the models and kits were classified by the government under item 737.15 of the Tariff Schedules of the United States which covers other models and construction kits and were assessed duty at the rate of 35 percent or 31 percent ad valorem depending on the date of entry.

Plaintiff claims that all the imported ship models are properly classifiable under item 737.07 of the tariff schedules which covers, among other things, ship models made to scale of the actual article at the ratio of 1 to 85 or smaller and provides for a duty rate of 16 percent or 14 percent ad valorem depending on the date of entry. Plaintiff further claims that the imported construction kits are properly classifiable under item 737.09 which covers construction kits or sets with construction units prefabricated to precise scale of the actual article and provides for a duty rate of 19 percent or 17 percent ad valorem depending on the date of entry. It claims alternatively that the kits are classifiable under item 737.07 as unassembled or unfinished ship models made to scale of the actual article at the ratio of 1 to 85 or smaller.

Defendant's position with respect to plaintiff's claims is that the imported models are not classifiable under item 737.07, since they are not made to the scale of the actual articles at the ratio of 1 to 85 or smaller. As to the imported kits, defendant contends that the construction units contained therein have not been prefabricated to the precise scale of the actual article and thus do not come within

[1] The nominal plaintiff Hudson Shipping Co., Inc. is the customs broker for Preston.

the ambit of item 737.09, as claimed by plaintiff. Respecting plaintiff's alternative claim for classification of the kits under item 737.07, defendant argues that construction kits for making or assembling model articles are not covered by item 737.07 and that in any event the kits do not consist of unassembled or unfinished ship models made to scale of the actual article.

Against this background, the primary issues are whether plaintiff has proven (1) that the imported models consist of ship models *made to scale of the actual article* at the ratio of 1 to 85 or smaller, and/or (2) that the imported kits consist of construction kits or sets *with construction units prefabricated to precise scale of the actual model.*

The Statutes

The provisions of the Tariff Schedules of the United States relevant to the action read as follows:

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

* * * * * * *

SCHEDULE 7. – SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

* * * * * * *

PART 5. – ARMS AND AMMUNITION; FISHING TACKLE; WHEEL GOODS; SPORTING GOODS, GAMES AND TOYS

* * * * * * *

Subpart E. – Models; Dolls, Toys, Tricks, Party Favors

* * * * * * *

	Model trains, model airplanes, model boats, and other model articles, all the foregoing whether or not toys; and construction kits or sets for making or assembling such model articles:	
737.05	Models of inventions and of other improvements in the arts, to be used exclusively as models	* * *
	Other models, and construction kits or sets:	
737.07	Rail locomotives and rail vehicles; railroad and railway rolling stock; track, including	

	switching track; rail depots, round houses, signal towers, water towers, and other trackside structures; trolley buses and trolley-bus systems; cable-car systems; highway vehicles; ships and harbor structures; and airplanes and spacecraft; all the foregoing made to scale of the actual article at the ratio of 1 to 85 or smaller	16% ad val. [for merchandise entered prior to 1968] 14% ad val. [for merchandise entered during 1968, T.D. 68-9]
737.09	Construction kits or sets with construction units prefabricated to precise scale of the actual article	19% ad val. [for merchandise entered prior to 1968] 17% ad val. [for merchandise entered during 1968, T.D. 68-9]
737.15	Other	35% ad val. [for merchandise entered prior to 1968] 31% ad val. [for merchandise entered during 1968, T.D. 68-9]

The Testimony

Helpful in resolving the issues is a summary of the testimony of the two witnesses who appeared at the trial—one for the plaintiff, the second for the defendant. Plaintiff's witness was George H. Rowsom, executive vice president and general manager of the importer, Preston, which is primarily a ship chandler dealing in pleasure boat supplies. It also imports and sells to the general public assembled ship models and construction kits containing the components needed to assemble ship models. The witness started his employment at Preston's where initially he ran the mail order and advertising phases of the business. Subsequently he was given the responsibility for starting a ship model department. His experience in ship model building was derived from assembling five ship models from construction kits. He undertook this task so that he would be in a position to speak authoritatively and help people who had purchased construction kits from Preston's in their construction, as well as answer questions on what procedural steps to take. His additional experience in the ship model field was obtained from going to various hobby shops and trade fairs in order to ascertain what scale models were available and from reading various trade publications, researching various books for ship specifications and viewing paintings and photographs. His company eventually selected Constructo as its supplier because its "models were of the caliber and of the precise scale that we were looking for to offer to our customers." R. 26.

The witness stated that while scale might mean something to some ship model builders,[2] others were totally disinterested in scale. In fact, his customers were mostly interested in scale from the standpoint of wanting to know how large the completed ship model would be so that they would have room to display it. According to Mr. Rowsom, "[a] scale model of a ship would be, in terms of the model builder, one that, in relative detail, approximates the preecis replica of the original." R. 149. The witness explained that what he meant by relative scale is that the components as a complete picture represent what the actual ship looks like as opposed to being mathematically perfect without any tolerances for error. Thus the witness does not normally compute the various dimensions on the imported models mathematically; rather he computes the dimensions by crude measurements, not by micrometer measurements.

Mr. Rowsom further testified that the word "precise" as it concerns the model builder means accuracy within certain allowable tolerances

[2] Mr. Rowsom indicated that when he talked about model builders, he was referring to himself and those of his customers who built models.

taking into consideration the equipment, tools and machinery available to prefabricate specific parts. However, he was unable to state what these tolerances were, but he indicated that those who knew something about ship models can almost tell by the eye whether something is in "relative scale" or not. The witness did not agree that all of an article's components had to be increased or reduced in the same proportion to be in scale; thus, he testified that one could have a scale model if the hull had a scale of 1 to 200 and the mast had a different scale of 1 to 150.

He went on to state that in model building, allowances are made for slight variations in scale because component pieces cannot always be made to specific mathematical scale. Thus, Constructo's hulls were not manufactured to exact measurements because they were finished by hand rather than by machine and when one deals with something made by hand, allowances must be made for slight tolerances of accuracy. And in this vein, he testified that in the imported models the rigging lines for the foremasts are not in the same scale as the rest of the ships. The line used for this purpose is that which is commercially available and, in the opinion of the witness, for model building purposes is sufficient to represent the general feeling of the actual rigging on the ships. Additionally, the items found in the small packets included in the construction kits, such as silver eyelets representing port lights, pins used to fashion the davits, lifeboats, wheels, windlasses, anchors, etc., are not to scale; indeed, some of the selfsame items are included in kits or models of entirely different scales.

The witness pointed out that the superstructure of a ship refers to the deck detail and the cabin housing and that the superstructure of a scale model should be in precise scale. However, the witness indicated that in some instances superstructures may be changed over the years and thus differ from the original plans. Similarly, sail plans and the mast dimensions are occasionally changed during the life of a ship and hence would also differ from the original plans.

With regard to measurements in general, Mr. Rowsom testified that the term "length" could mean a number of things. Thus there is an overall length which is the length from the tip of the bowsprit to the stern or to the boom over the stern. Other lengths include the length of the deck and the water-line length. In this context, the witness stated that he checked the scale of each of the imported models by first obtaining from various unidentified publications figures allegedly representing a few basic measurements of the actual ships (such as length, width and depth). These measurements he referred to as "actual ship measurements." See plaintiff's exhibit 10. He then compared these "measurements" to his "model measurements" (*ibid.*)

which he secured by taking measurements from the assembled models or from the plans included in the construction kits. In this latter connection, he stated that while measurements of length, width and depth are important, a number of other measurements are necessary in order to determine whether components of the model such as the hull actually conform to scale specifications. Despite the necessity of such other measurements, the witness conceded that they were not taken.

Defendant's witness was Lt. Commander Richard Hinkle, an officer in the United States Coast Guard, who is a naval architect and marine engineer.[3] He testified that in 1966 he worked for a ship model builder and is thoroughly familiar with the use of ship models as an analytical tool in naval architecture and as a sales promotion item. Ship models are a necessary tool of naval architecture and for that purpose generally have an accuracy within plus or minus $\frac{1}{64}$ of an inch. The witness did not know, however, what tolerances are permissible in the trade for scale model ships and sets.

According to Commander Hinkle, scale is the manner in which dimensions are proportioned; thus, in a scale of 1 to 100, one foot on the drawing would represent 100 feet on the actual ship. Further, on a scale drawing, the various objects on the drawing must be increased or reduced according to the same scale. For example, the height, width and breadth dimensions must all be reproduced to the same scale to avoid distortion. Accordingly, if the length is reduced to one proportion and the breadth to another, the drawing is not a scale drawing.

In designing a ship, a preliminary design is made, following which a lines drawing containing a body plan is prepared. General arrangement plans and basic structural plans are also prepared. To duplicate the outside of a ship, the most valuable plan is the lines drawing, which can be developed from a body plan if the spacing is known.[4]

A ship cannot be duplicated on the basis of general arrangement plans because the views are not given at a sufficient number of different positions to develop it. There would be an infinite number of shapes

[3] The witness is presently chief of the search and rescue section in the engineering division of the Coast Guard. He graduated from the Coast Guard Academy in 1961; attended M.I.T. from 1964 to 1966 where he received a master of science degree in naval architecture and marine engineering. During his studies at M.I.T., he worked with a professional model maker developing a model which was subsequently used in a towing tank. He also spent four years as an instructor at the Coast Guard Academy teaching naval architecture and other subjects.

[4] The witness described a body plan thusly (R. 287):

> The body plan is formed by passing planes that are vertical and perpendicular to the longitudinal center line of the ship or the longitudinal axis of the ship through there and the molded hull form, which were these planes at various stations along the length of the ship. The intersection of the hull form and the plane would form a line and these lines are portrayed in the body plan. It's quite similar if I took a loaf of bread and ran it through a slicer, if you took a look at the edge of each slice and use that as a line and drew them on there, this would be the body plan. If I ran a hull through the slicer, the lines of each section, I'd see at the outline.

that one could come up with that would be perversions of some basic form. Similarly, a ship cannot be duplicated on the basis of length, draft, and beam dimensions. As to this, the witness demonstrated that using the same length, beam, and draft one could come up with an infinite number of hull shapes—ranging from a rectangular box shape to a prism shape to a diamond shape. Hence, there would be an infinite number of ship hulls possible. In these circumstances, in order to duplicate a particular ship's hull, it is necessary to get a lines drawing or a good table of offsets.[4]

The Law

Considering next the legal aspects, it is apparent that item 737.15, under which the imported merchandise was classified, makes no distinction as to the types of models or construction kits for the assembling of models, but encompasses all models or kits (not otherwise specifically provided for) whether or not of superior or inferior quality and craftsmanship or of high or low value. *Arthur R. Sawers* v. *United States*, 60 Cust. Ct. 593, 596, C.D. 3467, 285 F. Supp. 852, 853 (1968). It is, therefore, clear that item 737.15 is the appropriate provision for classification unless the plaintiff can establish that the imported merchandise is more specifically provided for in item 737.07 or 737.09 as claimed.

1. *Common meaning of the term "scale" as used in items 737.07 and 737.09.*

To support its claims, plaintiff contends that the use of the words "scale of the actual article" in item 737.07 does not refer to a specific individual unique thing but rather is a reference to various *eo nomine* classes of articles. For example, according to plaintiff, to constitute a model under item 737.07 an article need not be a particular trackside structure such as the Hempstead Station with all scale details thereof in conformance with the actual station; rather the article need only be identifiable as portraying a kind of trackside structure. Further, plaintiff maintains that under item 737.07 the presence of the word "scale" therein is merely to insure that the maximum size of a model classifiable thereunder be scaled to a ratio smaller than 1 to 85. It argues that since item 737.07 does not use the word "uniform" to modify the word scale, some parts of a model classifiable thereunder may be scaled to a ratio of 1 to 90, while other parts of the same model may be scaled to a ratio of 1 to 125. In other words, plaintiff insists that item 737.07 imposes no *uniform* scale requirement, but only a maximum size requirement.

[4] A table of offsets indicates the distance from the center line plane of the ship to the molded hull form at various heights above the base line or various water lines and at various stations or longitudinal positions along the length of the ship.

With regard to item 737.09, plaintiff argues that as in the case of item 737.07, there is no requirement that all of the prefabricated units for a model be in a *uniform* precise scale. Rather, in plaintiff's view, since item 737.09 does not use the word "uniform" in referring to "precise scale" some of the prefabricated units of a model kit may be of one precise scale, while other prefabricated units in the same kit may be of a different precise scale.

In view of these arguments, it is important to determine the common meaning of the word "scale" as used in items 737.07 and 737.09. On this phase, plaintiff's witness Rowsom testified (as noted previously) that "scale" for purposes of model building is that which is in "relative detail" although not all of an article's components have to be increased or reduced in the same proportion to be in scale. The witness added that the word "precise" means accuracy within certain tolerances which could be judged by the eye of an experienced model builder, although he did not know what these tolerances are.

In contrast, as shown by the various lexicographic definitions, the noun "scale" basically means a fixed or definite proportion which is used in determining the relationship of a representation to that which it represents; accordingly, the verb "to scale" means to make a drawing, pattern, projection of or model, according to scale, i.e., according to a fixed or definite proportion, and the adjective "scale" means drawn or constructed to scale.[6] This common meaning of the

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[6] *Funk & Wagnalls New Standard Dictionary of the English Language*, pp. 2184-2185 (1956):
scale, v. * * * 2. To make a drawing, pattern, or projection of, according to scale; draft in proper proportion; as, to *scale* a building. * * * 4. To reduce according to a scale; cut down proportionally; as, to *scale* wages. * * *
scale, n. * * * 2. Any system of designating the magnitude of a unit of measurement, or the correspondence of two magnitudes, one of which is represented by the other; any system in which a fixed proportion is used in determining quantities; as, a *scale* of 1 inch to the mile; the *scale* of one-hundredth; a taxation *scale* of 2 percent. * * * scaled, pa. * * * 2. Measured or reduced to a required standard; * * *.
Webster's Third New International Dictionary of the English Language, Unabridged, p. 2023 (1963):
scale, n. * * * 1a(1): an indication of the relationship between the distances on a map, chart, or plan and the corresponding actual distances usu. in, the form of a direct statement (as 1 inch to 1 mile), a representative fraction (as 1/250,000 or 1:250,000), * * *.
scale, v. * * * 2c: to pattern, make, regulate, set, or estimate according to some proportion, rate, standard, or control: increase or reduce according to a fixed ratio * * *.
scale, adj.: drawn or constructed to scale (~map) (~drawing) (~model of an automobile).
Audels New Mechanical Dictionary for Technical Trades, p. 578 (1960):
scale drawing.—The reproduction or delineation of an object on a reduced scale, each unit of which bears a definite proportion to a unit of linear measurement by which the object itself is measured.
Engineering Encyclopedia, p. 1095 (1954):
Scale in Mechanical Drawing. The term "scale" is applied (1) to the graduated rule or instrument used in measuring linear dimensions and (2) the "scale of a drawing" indicates its size relative to the actual size * * *.
Frederic Swing Crispin, *Dictionary of Technical Terms*, p. 344 (1957):
scale * * * (2) The size of a drawing in relation to the size of the object represented.
scaled drawing — A drawing made smaller than the work which it represents, but to a definite proportion, which should be specified on the drawing itself.
The American Heritage Dictionary of the English Language, p. 1157 (1970):
scale * * * 3a. The proportion used in determining the relationship of a representation to that which it represents.

word "scale" was also that understood by defendant's witness Hinkle who (as indicated before) testified that in a scale drawing, the height, width, and breadth dimensions all should be reproduced to the same scale, and that a reduced drawing of a ship's hull, the length of which had been reduced to one proportion and the breadth to another proportion would not be a scale drawing of the hull in the formal context of a scale drawing, and that a model produced on the basis of such a drawing would be distorted.

From the foregoing, there is no basis for plaintiff's contention that inasmuch as Congress failed to preface "scale" by the word "uniform," Congress did not intend that each model provided in item 737.07 be constructed on the basis of one and the same scale. Similarly, there is no basis for the argument that a construction unit under item 737.09 need not be prefabricated on the basis of one and the same scale, whatever that scale may be, or that the individual units of a construction kit or set need not be made to one and the same scale. Such a reasoning is simply contrary to common meaning as well as common logic. A ship's hull prefabricated to at least two different scales (which is the case with respect to the present importations, as hereinafter discussed), can hardly be what Congress envisioned when it provided in item 737.09 for construction kits or sets with construction units prefabricated to *precise* scale. Such a hull is clearly not prefabricated to scale, much less to a precise scale. Further, the obvious reason for providing for a precise scale for the individual units is so that the entire model when assembled would equally be to precise scale. If each unit is prefabricated to a different scale, assuming such units can be assembled into one model, they would result in a completely distorted replica, not a scale model.

Plaintiff, however, argues that its position—that a scale article may be one built according to two or more different scales—is supported by the following statement in *Associated Hobby Mfrs., Inc.* v. *United States*, 60 CCPA 121, 123, C.A.D. 1093, 475 F.2d 654, 655 (1973):

> * * * [u]nder TSUS 737.09 there is no specific scale required for classification thereunder—HO or otherwise—so long as it is made to a "precise scale."

Manifestly this statement does not stand for the position thus urged by plaintiff. Rather, the statement stands for the proposition that under item 737.09 there is no specific scale required for classification thereunder, so long as the units are made to a *precise scale*. Thus, they still need to be made to *one* scale, whatever that scale may be.

2. *Legislative history of model provisions.*

Under the Tariff Act of 1930 the only specific provision for models was paragraph 1720 which provided for models of inventions and other improvements in the arts to be used exclusively as models. Models chiefly used for the amusement of children were classifiable as toys, while models chiefly used by adults were classifiable under various basket provisions.

In 1960, the Tariff Commission submitted to the Congress proposed new Tariff Schedules, including items 737.05 to 737.15 which covered various model articles and construction kits for assembling such model articles. *Tariff Classification Study – Explanatory and Background Materials*, Schedule 7, p. 266 (1960) (hereafter *Study*). With respect to items 737.05 to 737.15, the *Study* indicated (pp. 291–2) that toy trains, toy airplanes, and similar toy articles (frequently referred to as "model trains" etc.) and construction sets for such toys were combined with model trains, model airplanes, etc. and other model sets or kits, in order to eliminate the then existing difficulty of distinguishing between toys and non-toys. The *Study* went on to state (p. 292) that the existing provisions under the 1930 Act had caused continual dispute as to whether certain models, particularly trains, were toys for children or models for hobbyists, and that the constantly improving quality of "toy" trains made it increasingly difficult to find a workable set of criteria to distinguish between the two groups. For that reason, it was pointed out that the proposed initial schedule contained two provisions, i.e., item 737.10 with a rate of 19 percent for model construction kits or sets with units prefabricated to the precise scale of the finished article (which almost invariably were for hobbyists) and a second provision, item 737.15, with a rate of 35 percent (the applicable rate for toys) for all other models and construction kits or sets. *Study*, p. 292.

This proposal to combine all other models and construction sets at the rate of 35 percent drew strong opposition from importers who had been importing model trains and other model railroad equipment at a 13.75 percent rate of duty under paragraph 353 of the 1930 Tariff Act if they had an electrical device as an essential element or at 19 percent under paragraph 397 as non-specified articles of metal. *Ibid.*

The *Study* further indicated (p. 292) that as a result of the foregoing, item 737.07 was revised and "locomotives and other model railroad rolling stock covered by this practice have been narrowly described and provided for at the rate of 16 percent" which is the

weighted average of the two rates formerly applicable.[7] Item 737.07, as thus revised, appeared in the *Study* as follows (p. 266):

	Other models, and construction kits or sets:	
737.07	Locomotives and railroad rolling stock, each unit containing by weight over 75 percent of copper, assembled by hand and made to precise scale of the actual article	16% ad val.

Subsequently, item 737.07 was further amended and enacted to read as follows (*Tariff Classification Study – First Supplemental Report* (1962), p. 80 (hereafter *First Supplemental Report*)):

Rail locomotives and rail vehicles; railroad and railway rolling stock; track, including switching track; rail depots, round houses, signal towers, water towers, and other trackside structures; trolley buses and trolley-bus systems; and cable-car systems; all the foregoing made to scale of the actual article at the ratio of 1 to 85 or smaller	(8)

The following reason was given by the Tariff Commission for the amendment (*id.* at 81):

> An effort was made to resolve the model train issue in the original draft schedule on which public hearings were held in December 1958. *As a result of testimony and statements received from an interested importer in connection with that hearing,* the provisions of item 737.07 were incorporated in the proposed schedule to preserve the substance of the practice with respect to locomotives and railroad rolling stock of types used by adult hobbyists. Other types of imports were brought to the attention of the Commission in connection with the public hearing on this first supplemental report in proposed form. The foregoing change in item 737.07 takes into account the latest existing customs practices in regard to this matter. See C.A.D. 746.[9] [Emphasis added.]

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[7] There was no opposition to the proposed item 737.09 (which initially was item 737.10) for construction kits or sets prefabricated to the precise scale of the actual article. *Study*, p. 293.

[8] It is to be noted that the language for item 737.07 was adopted by Congress *in toto* from a suggested amendment contained in a memorandum submitted by a group of importers of HO and smaller scale railroad equipment which is reprinted in the *First Supplemental Report*, p. 417 (1962). See *Pacific Fast Mail* v. *United States*, 68 Cust. Ct. 41, 47–48, C.D. 4333, 338 F. Supp. 506, 511 (1972).

[9] C.A.D. 746 refers to *Polk's Model Craft Hobbies, Inc., et al.* v. *United States*, 42 Cust. Ct. 103, C.D. 2073 (1959), *aff'd*, 47 CCPA 137, C.A.D. 746 (1960) which held that miniature railroad locomotives, cars, track and accessories which had been manufactured to HO scale according to the rigid standards set up by the National Model Railroad Association, were not toys under the Tariff Act of 1930.

The testimony thus referred to was presented to the Tariff Commission in December 1958 by James F. Donnelly on behalf of the Pacific Fast Mail Co. In the course of that testimony, Mr. Donnelly pointed out the differences between (1) the extremely accurate scale models of railroad locomotives, diesel engines and rolling stock which contain "[a]s much detail as possible that the ingenuity of a hand craftsman can impart to an article * * *" and (2) other models. *Study*, p. 666. To illustrate, he presented samples noting their "extreme detail and faithful duplication in miniature." *Id.* p. 668. With regard to a sample of a model of the famous Mohawk New York Central locomotive, he testified (*id.* p. 669):

> * * * The detail is not stamped out from the body, but is separately added, and it is a very, very close and precise scale of the prototype unit.
>
> * * * * * * *
>
> These models as the Commission can readily see, are constructed from solid brass—not plastic, not die cast or stamped common metal—*and the scale detail is true, including the pilot, hand rails, steps, piping and rivets. The stack, the bell, the whistle, and so forth.* [Emphasis added.]

Referring specifically to scale, Mr. Donnelly testified (*id.* p. 674):

> MR. SHEWMAKER. What do these specifications of the National Model Railroad Association embrace?
>
> MR. DONNELLY. They embrace "scale," which is the manufacture of a miniature model conforming to its full-size prototype.
>
> In other words, one of these locomotives is a faithful prototype of the New York Central Mohawk, in that what is 1 foot long on the actual locomotive used by the New York Central may be one-tenth of a millimeter in the Tenshodo model, or the United model.
>
> * * * * * * *
>
> MR. SHEWMAKER. Do you know * * * how these specifications are arrived at, and whether they are subject to change?
>
> MR. DONNELLY. They are subject to change in the sense that the hobbyist wants more and more perfection. He would prefer to have every single valve on a New York Central locomotive duplicated in his miniature, even if he had to use a microscope in order to find it in the miniature.
>
> He would like to see it there. And to that extent the association is continually seeking more and more perfection of detail, more and more precise duplication in miniature of a feature which exists in the prototype full size locomotive for business use.
>
> * * * * * * *

MR. HART. Mr. Donnelly, are any of the Lionel or other toy trains made to scale?

MR. DONNELLY. To a degree, yes. But as I pointed out in my remarks to the Commission, particularly on the wheels, they are not to scale. The flanges of the wheels are so designed they can stand abuse and run on improperly laid track.

The trains represented here require proper flanging of wheels to run on track, which is also gaged and to scale. In this "HO" field and in this category of model trains, the track itself has to be laid to scale, and the width of rail must be to scale.

In addition, the National Model Railroad Association (NMRA), by letter to the Tariff Commission dated November 29, 1961, endorsed the adoption by the Commission of a clear and distinct definition of a scale railroad model. *First Supplemental Report*, p. 418. In that letter, NMRA represented that it was an organization made up of adults who were devoted to the construction and/or operation of miniature railroads, with facilities and equipment scaled from the prototype, and that it was concerned with any effort to classify the intricate and carefully constructed scale replicas that form a part of the hobby of model railroading in the same category as toys. *First Supplemental Report*, p. 418.

Relevant, too, is a letter of August 26, 1961 written to the House Committee on Ways and Means, on behalf of E. Suydam & Company, a manufacturer of HO scale model railroad kits and importer of handcrafted scale models of original interurban and electric railway equipment. *Id.* pp. 1020–4. The letter stated that overseas model makers work from reduced copies of the actual blueprints and dimensional plans obtained from the original railroad manufacturers and reaffirmed that scale models should conform to the applicable standards set by the NMRA. The letter was accompanied by a catalogue partly devoted to histories of original railways, photos of original cars and description of the models, exhibiting how closely they were built to resemble the originals. *Ibid.*

From the above, it is clear that item 737.07 was created as an exception to a general provision for other models in item 737.15 and was intended to cover intricate and carefully constructed scale replicas of actual prototypes manufactured according to strict standards and requirements. By the same token, item 737.09 was intended to encompass construction kits or sets with construction units prefabricated to precise scale of the actual articles.

In addition, S. Rep. No. 530, 89th Cong., 1st Sess. (1965) makes it evident that Congress intended that to be assessable at the lower

737.07 duty rate scale models of ships must meet the same high standards as model railroads. That report explained the provisions of a bill which ultimately was enacted as the Tariff Schedules Technical Amendments Act of 1965, Pub. Law 89–241, 79 Stat. 933, and which, among other things, added the words "ships and harbor structures; and airplanes and spacecraft" to item 737.07. With regard to the ship model amendment, the report stated (p. 21):

> *Section 72. Models*
>
> Subsection (a) of this section would amend the article description for item 737.07 so as to include therein scale models of highway vehicles, ships and harbor structures, and airplanes and spacecraft. These models are comparable to the scale railroad and other models already provided for in item 737.07 and were entitled to the same rate treatment under the old tariff schedules.

Thus to be classifiable under item 737.07, ship models had to be comparable to scale railroad models which, as represented to Congress, were required to consist of accurate scale replicas of actual prototypes that were manufactured according to well-known strict requirements and standards.[10]

The imported models do not meet the requirements of item 737.07

1. *The Juan Sebastian Elcano*

The record demonstrates that the actual Juan Sebastian Elcano has the following dimensions, as authenticated by the chief engineer of the Naval Architecture Section in Madrid:

Length, prow to stern	–	79.247 m.[11] [or approx. 260 ft.]
Length overall	–	94.107 m. [or approx. 308.7 ft.]
Beam	–	13.106 m. [or approx. 43 ft.]
Draft	–	8.687 m. [or approx. 28.5 ft.]

It is to be noted (1) that the scale of the purported model of this ship is stated to be 1 foot to 205 feet and (2) that a comparison of the model with the plan thereof contained in the construction kit indicates that the plan approximately depicts the model. Thus, any measurement of, and any conclusions reached with regard to, the model shown on the plan are equally applicable to the model.

With these considerations in mind, based on the unchallenged calculations of defendant's witness Hinkle, the measurement of the

[10] The specific references to scale models of actual and existing prototypes negate plaintiff's contention that to be classifiable under item 737.07 the finished model need not be a scale model *of a particular actual ship* with all of the features and characteristics of that particular ship "so long as it is a kind of ship such as a well-known class of ship—i.e., clipper ship, star class sailboat, etc." See plaintiff's brief, pp. 10–12.

[11] 1 meter equals 39.37 inches or 3.28 feet.

model shown in the plan in the kit results in an overall length of 22.468 inches, which at the scale of 1 to 205 equals 384 feet as the overall length of the ship. On the same basis, the beam on the plan measures 2.69 inches, which at the scale of 1 to 205 equals 46 feet as the width of the ship. When it is considered that the overall length of the actual ship is 308.7 feet and the beam 43 feet, while the model extrapolated to scale has an overall length of 384 feet and a beam of 46 feet, it is apparent that the model is not built to scale of the actual article as required by item 737.07 but is a model built to a distorted scale.

Further, given (1) the figures of 308.7 feet for the overall length of the actual ship and 43 feet for the beam, and (2) the overall length of the model on the plan as 22.468 inches and the width 2.69 inches, the length overall of the model is at a scale of 1 to 165, whereas the beam scale is 1 to 193. Obviously, a model built not to one particular scale of the actual article but to several different scales is not a model built to scale of the actual article.

It is also to be observed that plaintiff's witness Rowsom measured the "length on deck" (i.e., the length of the prow to the stern) of the purported model of the Juan Sebastian Elcano and obtained a measurement of 1.5 feet. See plaintiff's exhibit 10. At the scale of 1 to 205, this would translate to a length of 307.5 feet. However, the actual length prow to stern of the Elcano is 260 feet—which is an additional indication that the model in question was not built to actual scale.

Finally, the record is uncontradicted that the dimensions of the Elcano which appear in the record are entirely insufficient as a basis for constructing a scale model of that ship; indeed, from these dimensions, an infinite number of forms could be developed.

2. *The Great Republic*

No plans or specifications for the Great Republic are contained in the record. On the contrary, all that appears in the record are a few dimensions from two books (plaintiff's exhibits 11A – 11D) to show what plaintiff's witness Rowsom referred to in his testimony (R. 228) when he stated he had been able to get specifications for the Great Republic from printed documents for the purpose of comparing the measurements of the actual ship against those shown on the model's plan. The dimensions for the Great Republic as listed in these exhibits are "335 feet, by 53 feet, by 38 feet" with a registered tonnage of 4,555, plus a somewhat more detailed description of the masts. They do not contain a profile of the hull, much less a body plan or a line drawing. On the basis of these dimensions, it is virtually impossible to construct a scale model of the actual ship.

Further, plaintiff's witness Rowsom testified that the overall length of the model as shown on the plan contained in the construction kit was about 20 inches, which when converted according to the given scale of 1 to 265, does not equal 335 feet—the length of the Great Republic—but rather equals 441 feet. Put otherwise, on the basis of Rowsom's measurement, the overall length of the model is built to a scale of 1 to 201 rather than to the given scale of 1 to 265. Further, according to Rowsom, the width of the model measures 0.198 feet, which at the given scale of 1 to 265 comes out to approximately 53 feet—the width of the ship.

These disparities make it obvious that the model has not been built to one particular scale, but on the basis of two or more scales and is not a model built to scale of the actual article as contemplated by item 737.07.

3. *The Cruz del Sur* (*The Southern Cross*)

As in the case of the Great Republic, no plans or specifications for the Cruz del Sur are contained in the record. And as in the case of the Great Republic all that appears in the record are three dimensions which Mr. Rowsom testified he obtained from various publications. These dimensions are 134 feet for the overall length, 114 feet for the length of the hull and 26 feet for the width. See plaintiff's exhibit 10. But even assuming these dimensions are correct, they are clearly insufficient to enable one to construct a scale model of the actual ship.

Plaintiff's witness Rowsom measured the overall length, length of hull and width of the model and came up with figures of 1.4 feet, 1.1 feet, and 0.25 feet, respectively. See plaintiff's exhibit 10. At the indicated scale of 1 to 100, this would translate to (i) an overall length of 140 feet as compared with the ship's length of 134 feet; (ii) a hull length of 110 feet as compared with the length of the ship's hull of 114 feet; and (iii) a beam of 25 feet as compared with the ship's beam of 26 feet. On the basis of Rowsom's calculations, the overall length of the model is at a scale of 1 to 95.7, the length of the hull is at a scale of 1 to 103.6, and the beam is at a scale of 1 to 104.

Defendant's witness Hinkle also measured the model in question and came up with figures of 18⅜ inches or 1.51 feet for the overall length and 14½ inches or 1.2 feet for the length of the hull while his measurement of the beam of the model as shown in the plan is 3 inches or 0.25 feet. On the indicated scale of 1 to 100, the overall length of the model based on Hinkle's measurements expands to 151 feet, the length of the hull expands to 120 feet, and the beam to 25 feet. Upon comparing these figures with the ship's overall length of

134 feet, its hull length of 114 feet and its beam of 26 feet, the overall length of the model is at a scale of 1 to 89, the length of the hull is at the scale of 1 to 95, and the width or beam at the scale of 1 to 104.

Thus, once again the record shows that the imported model has not been built to one particular scale but to several different scales and therefore is not a model built to scale of the actual article as contemplated by item 737.07.

The imported construction kits or sets do not meet the requirements of item 737.09

As previously discussed, item 737.09 is intended to cover only construction kits or sets for making or assembling ship models with construction units prefabricated to one and the same scale of the actual articles. Plaintiff not only has failed to present competent evidence to support its claim for classification of the imported kits or sets under item 737.09, but the record in its entirety supports the government's findings, inherent in the classification under item 737.15, that the kits do not meet the requirements of item 737.09 and hence are not more specifically provided for under that item.

1. *The Juan Sebastian Elcano kit*

Plaintiff's exhibit 2 purports to result, when assembled, in a scale model of the Juan Sebastian Elcano. However, no evidence was introduced which would show characteristics and detailing which distinguish the Juan Sebastian Elcano from other ships. In fact, as previously discussed, the available facts establish that the resulting model is not a scale model of the Juan Sebastian Elcano and that the units of the imported sets or kits have not been prefabricated to scale, much less to precise scale.

It has been observed earlier that the length of the Juan Sebastian Elcano, prow to stern, is approximately 260 feet and that its overall length is approximately 308.7 feet. Hence, if the prow to stern length on the plan in plaintiff's exhibit 2 is measured and converted according to the given scale of 1 to 205, the result should be 260 feet. Similarly, if the overall length is measured and converted according to the scale, the result should be 308.7 feet. However, this is not the case. For as already pointed out when the prow to stern length of the model is measured and converted, it results in approximately 307 feet rather than 260 feet, and when the length overall is measured and converted, it results in approximately 384 feet rather than 308.7 feet. Clearly, when the dimensions of key components of the model are constructed to different scales, neither of which is to the purported scale of the

model, they cannot be considered as prefabricated to scale, much less to precise scale, of the actual ship.

2. *The Great Republic kit*

Plaintiff's exhibit 4 purports to result, when assembled, in a scale model of the Great Republic. However, as previously indicated, the record establishes that the resulting model is not a scale model of the Great Republic, and thus the units of the imported sets or kits have not been prefabricated to scale, much less to precise scale.

Beyond that, Mr. Rowsom conceded that he had not seen any original or reconstructed plans for the Great Republic which had burned down to the water line on its original voyage, but was basing his conclusions on a few published dimensions of the Great Republic as well as pictures and photographs.

The published descriptions of the Great Republic basically indicate that it was a clipper ship. However, while all clipper ships (i.e., exceptionally fast sailing vessels developed in the United States primarily between 1830 and 1860) had certain characteristics (such as a heavy and lofty rig, usually consisting of three masts and a sharp hull), the hull lines of clipper ships varied from ship to ship. See 5 Encyclopaedia Britannica, pp. 930–931 (1969). In this circumstance, it is virtually impossible (as previously indicated) to construct a scale model of the actual ship on the basis of the published dimensions of the Great Republic, i.e., 335 feet by 53 feet by 38 feet.

Further, reference has already been made to the fact that on the basis of measurements made by plaintiff's witness, the overall length of the model is at a scale of 1 to 201, while the width is at a scale of 1 to 265—which is the indicated scale. Thus again, since the dimensions of key components of the model are constructed to different scales, they cannot be considered as prefabricated to scale, much less to precise scale.

3. *The Eagle kit*

Plaintiff's exhibit 5 purports to result, when assembled, in a scale model of the U.S. Coast Guard vessel Eagle. However, the record establishes that the resulting model is not a scale model of the Eagle, and that the units of the imported kits or sets have not been prefabricated to scale, much less to precise scale.

First, defendant's witness Hinkle, who made three cruises aboard the Eagle, testified that there are a number of major discrepancies between the model, as shown on the plan included in plaintiff's exhibit 5, and the actual Eagle. For that reason he stated that if he were to visit a ship's deck as portrayed in the plan included in plaintiff's

exhibit 5, he would not recognize it as the ship deck of the Eagle. Among the many discrepancies were omission of doors and accesses; omission of the "Captain's coffin," a large (5½ feet by 5½ feet by 9 feet) steering gear mechanism and one of the more interesting visitors' attractions of the ship; the presence of a non-existent windlass instead of skylights; and the omission of a two-headed motor-operated windlass.

That well-known characteristics of a ship are important was demonstrated by Mr. Rowsom's testimony when he was asked to identify a photograph of the Eagle. It was the detailing on the ship that enabled him to identify the photograph as that of the Eagle; otherwise he would have thought it to be either the Eagle or somebody else's school ship, depending on the location. Thus, clearly, without the characteristics and the detailing which make the Eagle recognizable as such, a model cannot be considered a model of the actual ship, i.e., the Eagle. Similarly, the construction kit or set for the assembly of a model of the Eagle, without the characteristics and detailing of the Eagle, cannot be considered as a construction kit or set for the assembly of the model of the Eagle.

What is more, even if it were held that a crude model is a model of the actual article (in this instance the Eagle), such crude model cannot be sufficient for purposes of item 737.09 which requires that the construction units of the sets or kits be built to *precise scale* of the actual article. Construction units which, when assembled, will result in a *crude* model, which omits important characteristics and detailing of the actual ship, cannot be considered as having been prefabricated to scale, let alone to precise scale.

It is also to be noted that the plan in plaintiff's exhibit 5 contains a figure similar to a body plan. A comparison of this figure with the actual body plan of the Eagle shows that the former does not represent the body plan of the Eagle and would result in a flat-bottomed hull with very little dead rise as opposed to a hull with a significant amount of dead rise and a bottom which slopes up very rapidly from the keel. Similarly, a comparison of the hull in plaintiff's exhibit 5 with the body plan of the Eagle reveals that the "below water" portion of the hull is flat-bottomed, whereas according to the body plan it should have a great deal of dead rise.[12] Even assuming that a model hull

[12] In its brief, plaintiff (pp. 14–15) contends that while a sailboat needs a heavy keel to avoid capsizing in a stiff breeze, to avoid an ugly model which would consist largely of the inconspicuous underwater hull, a model of a sailboat will often be made with a hull that is shortened in depth, or somewhat flattened on the bottom for mounting on a stand. There is no testimony as to how other model sailboats are made. To the extent that the instant importations have shortened keels, which plaintiff now appears to have conceded, they obviously cannot be considered as being built to precise scale of the actual ships.

that is not built to the plans of the actual ship can be considered as a model of the hull for that particular ship, it certainly cannot be considered as having been built to scale of the actual ship, much less to precise scale.

Finally, Rowsom's testimony shows that the Eagle kit was produced by Constructo at Preston's request. Rowsom had never seen the plans for the Eagle, but sent Constructo plans of the Eagle's sister ship, the Gorch Fock, as contained in a marine publication and asked Constructo to produce a kit from such plans. Mr. Rowsom conceded, however, that the Gorch Fock and Eagle were not the same length and that there could be other differences as well. In addition, the witness had no personal knowledge as to how the Eagle kit was actually prepared since he did not know what Constructo did with the plans he had sent it.

Whether construction kits or sets for making or assembling model articles are provided for under item 737.07

Plaintiff alternatively contends that construction sets or kits are covered by item 737.07 because the superior heading common to both items 737.07 and 737.09 reads "Other models, and construction kits or sets" and because, by reason of General Interpretative Rule 10(h), item 737.07 includes unassembled or unfinished model articles. However, in view of the court's finding that the construction units in the kits are not made to the scale of the actual articles, they would not in any event be classifiable under item 737.07, assuming that provision were applicable. But even apart from that, it must be concluded, for the reasons that follow, that item 737.07 is not applicable to construction kits for making or assembling models and that plaintiff's argument to the contrary is without merit.

General Interpretative Rule 10(h) provides that *unless the context requires otherwise*, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished. Thus, if an article description merely provided for models or model articles, conceivably it would include assembled as well as unassembled models. But that is not the case here. The superior heading applicable to *all* of the model provisions, including items 737.05, 737.07, 737.09 and 737.15, specifically enumerates *both* model trains, model airplanes, model boats, and other model articles, *and* construction kits or sets for making or assembling such models. Similarly, the inferior heading applicable to items 737.07, 737.09, and 737.15, provides for both models *and* construction kits or sets. Thus,

the plain meaning of the statutory language is that models or model articles are to be differentiated from construction kits or sets for making or assembling such model articles, and that a provision for models or model articles does not encompass construction kits or sets for making or assembling such model articles. This is the exact situation referred to in General Interpretative Rule 10(h). Here the context requires that a tariff description for models or model articles does not include unassembled and/or unfinished models or model articles in the form of construction kits or sets for the making or assembling of such articles.

That item 737.07 may not cover all assembled models, which when imported in the form of construction kits or sets may be provided for under item 737.09, or that item 737.09 may not cover all construction kits or sets which when assembled may be provided for under item 737.07 is immaterial. This is because all merchandise enumerated in the superior heading applicable to items 737.05 through 737.15 and not specifically provided for under items 737.05, 737.07, and 737.09, is provided for under item 737.15. The nub of the matter is that to accept plaintiff's interpretation would be to ignore the plain meaning of the statutory scheme and to hold the words "construction kits or sets" contained in *two* headnotes as being superfluous and of no meaning and significance.

Plaintiff failed to meet its burden of proof

In the present case, there were many ways in which plaintiff could have met its burden of proof in establishing that the imported ship models were made to scale of the actual ships they purport to represent and that the imported construction kits or sets consist of units which were prefabricated to precise scale of the actual ships they purport to represent. That plaintiff completely failed to meet its burden of proof, however, is apparent from the record in its entirety.

As shown by the record, plaintiff attempted to meet its burden of proof by relying on unsubstantiated, unauthenticated, and incomplete plans and illustrations found in books, which did not necessarily represent the ships involved; on a few dimensions found in various publications; and on broad, general conclusory statements made by Mr. Rowsom, executive vice president and general manager of Preston.

It is also worthy of note that plaintiff produced no testimony from the manufacturer, Constructo. There is no testimony that Constructo ever possessed either the original plans and specifications for the actual ships or any true copies thereof, or even any accurately reduced plans

and specifications therefor. There is no testimony that Constructo manufactured the assembled ships and prefabricated the construction units of the construction kits or sets in conformity with any plans and specifications of the actual ships. There is no testimony that Constructo ever attempted to incorporate in the assembled models or kits even the more significant details and characteristics of the actual ships. While Mr. Rowsom had forwarded a book (plaintiff's exhibit 14) containing purported plans of ships to Constructo, he did not know what Constructo did with the book and testified that at the time that Preston started purchasing from Constructo, the latter was already manufacturing the various articles, except for the Eagle.

Moreover, plaintiff produced no testimony from someone experienced in reading and interpreting ship plans and specifications, and in building ship models and construction kits, for such purposes as (1) comparing the limited plans and specifications introduced on behalf of plaintiff with representative samples of the imported assembled ship models and with representative samples of the imported construction kits or sets; (2) showing in what manner the importations did conform to the characteristics and specifications of the actual ships; (3) setting forth qualifications and requirements for scale model ships and scale model construction kits as opposed to "non-scale" model ships and construction kits; and (4) setting forth what tolerances and minor deviations, distortions and omissions are permissible in the trade for scale model ships and sets.

Conclusion

In summary, the court overrules plaintiff's claims for classification of the importations under items 737.07 and 737.09 and affirms their classification under item 737.15. Judgment will be entered accordingly.[13]

(C.D. 4607)

QUIGLEY AND MANARD, INC. *v.* UNITED STATES

Television coils—Inductors

The imported coils are admitted by defendant to be dedicated for use in the video IF (intermediate frequency) section of a television receiver designed to block the passage of a signal of a specified measurement in megahertz. It is also admitted by defendant that the coils are self-resonant coils electrically comprised of an induct-

[13] At a pretrial conference, plaintiff's counsel abandoned Court No. 69/40347 which covered purported ship models of the Mayflower and H.M.S. Bounty. Accordingly, that case is hereby dismissed.

ance in parallel with a distributed capacitance designed so that the desired self-resonant frequency is achieved to enable the device to operate as a filter to block the passage of certain frequencies.

The testimony establishes the imported coils are sometimes called "choke" coils and at the self-resonant frequency that the coils are used the inductive reactance and distributed capacitive reactance of the coils are equally important.

Plaintiff contends that because the inductive reactance and distributed capacitive reactance are equally important at the self-resonant frequency of the imported coils the coils are more than inductors as classified under TSUS item 682.60 and properly classifiable as parts of television apparatus under item 685.20.

Inductance measured in henrys is not shown to be the same thing as inductive reactance measured in ohms. Capacitance measured in farads is not shown to be the same thing as distributed capacitive reactance measured in ohms.

In the absence of proof establishing how reactance in ohms works in terms of inductance in henrys and capacitance in farads, and weighing the evidence that the useful characteristic of the imported coils in the circuit of a television receiver is their "reactance" at resonant frequency; that a reactance coil is a "reactor", and that in the lexicon of electronics as well as the legislative history, the terms "choke", "reactance", and "reactor" appear to be more closely associated with inductance and "inductors" than with capacitance and "capacitors", the presumption of correctness attaching to the classification as inductors is not overcome by the evidence that the inductive reactance and distributed capacitive reactance are equally important at the self-resonant frequency of the imported coils.

Court Nos. 68/45406, etc.

Port of Buffalo

[Judgment for defendant.]

(Decided August 27, 1975)

Lincoln & Stewart (*Frederick L. Ikenson* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*James Caffentzis* and *David A. Ast*, trial attorneys), for the defendant.

LANDIS, Judge: The issue in this case is whether certain merchandise imported from Canada and described in the customs entry papers as television coils was properly classified by customs as inductors under TSUS item 682.60, dutiable at 15% ad valorem, or should be classified as contended by plaintiff as parts of television apparatus under TSUS item 685.20, dutiable at 10% ad valorem.

This action involves ten protests consolidated for trial. The television coils described on the entry papers are identified by part numbers, this litigation being limited to part numbers 73B45–243, 73B53–251, 73C55–27, and 73C46–21.

In the pleadings defendant admits that the coils were delivered to the Admiral Corporation, Harvard, Illinois; that the coils "are dedicated for use in the video IF [intermediate frequency] section of a television receiver, and are designed to block the passage of a signal of a specified measurement in megahertz" and that "[t]he imported article is a self-resonant coil which electrically is comprised of an inductance in parallel with a distributed capacitance designed so that the desired self-resonant frequency is achieved to enable the device to operate as a filter to block the passage of certain frequencies." (Defendant's answer, No. 8.) Since defendant admits that the coils are dedicated parts of a television receiver, the only question to be determined is whether they are the article specifically provided for in TSUS as inductors.[1]

The trial record consists of the so-called official customs entry papers, nine exhibits,[2] and the testimony of two witnesses for plaintiff. Defendant introduced no evidence.

There is, in this record, no exhibit physically representative of the imported coils in the condition imported. The court is, therefore, put to the conception that the imported coils are windings of wire wound in a manner that fits them for a particular use in the IF video section of a television receiver.

To a substantial degree, the testimony of record involves the electrical properties of resistance, inductance, and capacitance, the electrical principles associated with those properties, and the manner in which those properties are employed in electronic circuits. None of what is next discussed about those properties is materially disputed.

All electronic components and circuits have the said three properties, resistance, inductance, and capacitance. Even a straight piece of wire has all three properties. None of those properties can be entirely gotten rid of in any component or circuit. Each of the prop-

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[1] TSUS provides that, as a matter of law:

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

[2] Exhibits 1, 2, 3, 4, 6, 7, and 8; prepared by plaintiff's witness Vincent Friberg, chart or diagram certain undisputed electronic circuit principles about which he testified. A physical exhibit, exhibit 5, is identified as an electronic filter (parallel resonant circuit) containing a discreet coil and a discreet capacitor enclosed in a housing. Collective exhibit 9 (9–A, 9–B, 9–C, and 9–D) are manufacturer's prints specifying, among other things, the electrical and mechanical parameters to be incorporated into the design of the imported coils.

erties to a certain extent can, however, be controlled. Common types of control include choice of wire (size, type of metal, etc.), of insulation, of dielectric, of impregnating material, wire tension, and wire coiling. The three properties are electrically measurable. Resistance is measured in "ohms". Inductance is measured in "henrys". Capacitance is measured in "farads". The properties of inductance and capacitance also offer opposition to the flow of alternating current. The technical term for this opposition is "reactance". The reactance offered by inductance is called "inductive reactance". The reactance offered by capacitance is called "capacitive reactance". Like resistance, reactance is measured in "ohms". The electronic term for the total opposition offered by the resistance and the reactance of a component or circuit is "impedance", also measured in "ohms".

The imported television coils in this case have the three properties, resistance, inductance, and capacitance. The capacitance of a coil is technically called "distributed capacitance" also known as "self capacitance". Distributed capacitance is defined as any "capacitance not concentrated within a capacitor, such as the capacitance between the turns in a coil or choke, or between adjacent conductors of a circuit." [3] Coiling a wire increases its inductance considerably. Some coils have a core of powdered iron or ferrite material. The core increases the inductance but has a very slight affect on the distributed capacitance of the coil. It is certain that two of the imported coils have a core. It is uncertain as to whether the other two coils do or do not have a core.

The prints furnished to the manufacturer of the imported coils (exhibit 9) support the testimony that these coils were designed and wound to have a specified value of inductance and specified resonant frequency. Frequency, which is the number of cycles of an alternating current nature which occur per second, is measured in "hertz". The prints for two of the coils (part Nos. 73B53–251 and 73B45–243) bear the designation "R. F. Choke Coil".[4] The specifications for the other two coils (part Nos. 73C46–21 and 73C55–27)[5] appear on prints bearing the designation "Peaking Coil".[6]

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[3] Graf, *Modern Dictionary of Electronics* (4th ed. 1972) (hereinafter Graf-*Electronics*).

[4] An "R. F. Choke Coil" is defined as a coil designed to have a high inductive reactance at radio frequences and used to prevent currents at these frequencies from passing from one circuit to another. Graf-*Electronics*.

[5] Part No. 73C55–27 is associated with a print numbered 73D55 (exhibit 9–D). The discrepancy in letters is not explained in the record.

[6] A "peaking coil" is defined as a "small coil placed in a circuit to resonate with the distributed capacitance of the circuit at a frequency for which peak response is desired, as in a video amplifier near the cutoff frequency." Cooke and Markus, *Electronics and Nucleonics Dictionary* (1960).

Plaintiff's principal witness, Mr. Vincent Friberg, an electrical engineer and director of engineering, General Instrument Corp., Automatic Manufacturing Division, Chicopee, Mass.,[7] testified that in addition to the inductance value and self-resonant frequency specified in the prints (exhibit 9), the imported coils have distributed capacitance. The latter property, he stated, is not specified in the prints because the distributed capacitance of the imported coils can be calculated from the specified inductance value and resonant frequency.

Mr. Friberg expressed the opinion that the print designation "R. F. Choke Coil" was a misnomer. Coils designated to have a specified inductance value and a specified resonant frequency, he said "should properly be called self-resonant chokes." He stated that "[t]he expression 'R. F. choke' is used variously to denote sometimes an inductor by certain people and others use it to denote a self-resonant device." It is not, he said, "a term that is really too vigorously applied." A peaking coil, according to Mr. Friberg, is typically used as an inductor. In his opinion, the two coils covered by the prints bearing that designation are self-resonant chokes, not peaking coils, because the specifications for both coils indicate a specified value of inductance and a specified resonant frequency. He admitted that all coils have a self-resonant frequency; that you specify resonant frequency if you want that frequency, although you might also specify a resonant frequency not to exceed a certain value if you want "pure inductance". Mr. Friberg further testified that to obtain a specified resonant frequency distributed capacitance must be controlled very accurately, and the self-resonant frequency is achieved in considerable difficulty for a particular purpose at considerable expense. There is, he stated, no point in specifying a resonant frequency if the coil is not to be used at that frequency point. Logically, he knew of no area where the specified resonant frequencies of the imported coils would be used except in television receivers.

Addressing himself to the imported coils, Mr. Friberg stated that they are sometimes called "choke" coils and that they are the equivalent of a parallel resonant circuit, consisting of an inductor and a capacitor, in which the "reactance" of each is the important characteristic. These imported coils, he said, do not need a capacitor to function at resonant frequency because the inductance and distributed capacitance built into the coils tune them to a self-resonant frequency and, at that frequency, the inductance and distributed capacitance are of equal importance.

[7] General Instrument of Canada, manufacturer of the imported coils, is a division of Mr. Friberg's company.

Distributed capacitance in a device that is nominally an inductor, Mr. Friberg stated, is generally considered undesirable, and while distributed capacitance cannot be gotten rid of in an inductor, attempt is made to keep the measurable distributed capacitance of an inductor at a minimum amount. In coils, he said, distributed capacitance varies tremendously and it is necessary to use different configurations in winding the coils to obtain the various distributed capacitances required. However, he admitted that the same techniques are used to decrease distributed capacitance as are used to increase distributed capacitance. It is, he stated, more difficult to control distributed capacitance than inductance. He acknowledged that the imported coils could be used as inductors in a circuit that would favor low-frequency signals and block high-frequency signals. At low frequencies the imported coils would be the inductor element of a filter circuit.

Asked the difference between a coil designed to be used at its self-resonant frequency and a coil not so designed, he testified that "a coil designed to be used on a self-resonant frequency develops a high impedance at that frequency and at a range of frequencies about that resonant point. It is used in a circuit to block the passage of signals in that frequency range * * * for purposes of circuit stability, to prevent regeneration at these frequencies, and to eliminate undesired interaction between these frequencies and other signals." At resonant frequency, Mr. Friberg stated, a self-resonant choke develops a high impedance of a resistive character; below the self-resonant frequency, the choke is inductive and above the self-resonant frequency, the choke is capacitive. He also testified that he knew generally how the imported coils are used in a television receiver, but he did not know "specifically in the particular circuit how * * * [they are] used."

Mr. Peter Orne, a consultant in electrical engineering and television, testified that his background included work on the circuit design and testing of all different circuits in a television receiver. He stated that he was familiar with the general class of self-resonant coils imported in this case and used in television sets. Mr. Orne explained that a television receiver is a superheterodyne receiver; that the small signal picked up by the antenna is received into a tuner; that the tuner transforms the incoming frequency signal to an intermediate frequency called IF frequency; that the purpose of a superheterodyne receiver is to get a "high gain" in the IF frequency economically; that to get a "high gain" requires a fixed IF frequency; that the IF frequency is fed into a detector which receives the intelligence from the complete signal; that in the detector a number of unwanted frequencies are created which must be eliminated, and that self-

resonant chokes are used to eliminate the unwanted frequencies, primarily harmonics of the intermediate frequency and the IF frequency itself. He testified that two of the filters (imported coils 73C55–27 and 73B45–243) have a self-resonant frequency at 65 megahertz which puts them exactly in the middle between the fundamental IF frequency and the second harmonic and they are effective in eliminating both the fundamental and second harmonic of the IF frequency from the output of whatever circuit they are placed in. Coil 73B53–251, with a self-resonant frequency of 44 megahertz, he stated, is used as the return of the detector where the purpose is to have maximum output at the signal frequencies and minimum output at undesired frequencies. Coil 73C46–21, which has a specified self-resonant frequency of 21.6 megahertz, Mr. Orne testified, relates to the "beat" of the carrier frequency with the IF frequency and one such beat falls into the range of 21.6 megahertz. He corroborated Mr. Friberg's testimony that the imported coils are used at their specified resonant frequencies; that they act basically as a tune circuit, which means that they are a combination of a capacitor and an inductor; that the coils are in part inductors and capacitors; that at the operating resonant frequency the capacitive and inductive properties are of equal importance, and that in his experience with self-resonant chokes the manufacturer was permitted wider tolerances than specified for inductance, but no greater tolerance than specified for the parameter of interest, namely, self-resonant frequency.

Relying on the undisputed fact that the inductive reactance and distributed capacitance reactance are of equal importance at the resonant frequency wherein the imported coils are designed to function in the video IF section of a television receiver, plaintiff argues that the imported coils are "more than inductors", citing *Edo Commercial Corp.* v. *United States*, 65 Cust. Ct. 30, C.D. 4049 (1970). The "more than" doctrine, however, is not a clear-cut rule of classification, and "it appears that each case must in the final analysis be determined on its own facts." *E. Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F. 2d 1396 (1971). The device in the *Edo* case was found to function as a microphone and a loudspeaker. On that factual basis, the court held that the device was not classifiable either as a microphone or a loudspeaker, but was properly classifiable as part of a depth sounding instrument in which the device performed co-equally as a microphone and loudspeaker.

The entire "more than" argument in this case seems to relate to whether the imported merchandise is an inductor as contended by defendant, or also a capacitor as contended by plaintiff. The evidence

from witnesses Friberg and Orne solely establishes that at the resonant frequency of these imported coils the inductive reactance and the distributed capacitive reactance of the coils are of equal importance. No one has professed to say or argue that the imported coils can function as pure capacitors.[8] As defendant points out, however, the imported coils, as do all coils and, for that matter, all inductors, possess inductance and distributed capacitance and have a resonant frequency. Inductive reactance is measured in ohms and it is obviously related to inductance, but inductance per se is measured in henrys so the two apparently are not the same thing. The same can be said for capacitive reactance. It, also, is measured in ohms and related to capacitance. But capacitive reactance measured in ohms is not shown to be the same thing as capacitance measured in farads. While reactance is somehow related to inductance and capacitance, plaintiff's emphasis on inductive reactance and capacitive reactance does not begin to establish how that reactance works in terms of inductance which is the property that opposes a change in current and induces electromotive forces in a circuit, and capacitance which is the property that permits the storage of electricity. Further, as one independent authority states, in determining resonant frequency the separate values of inductance and capacitance do not matter because the product of those properties is the quantity which fixes the critical frequency. Thus a circuit with 0.24 henry of inductance and 10 microfarads of capacitance will be resonant at the same frequency as one which has 0.06 henry of inductance and 40 microfarads of capacitance.[9]

Mr. Friberg's testimony that a coil with inductance and distributed capacitance is an inductor at frequencies below resonance, and a capacitor at frequencies above resonance is, I assume, based on electronic circuit theory. But no independent authority that I have consulted persuasively leads me to conclude that because in circuit theory an inductance coil has a capacitive reactance at higher frequencies, the equivalent of a pure capacitor, that it is not an inductance coil.[10]

Analyzing plaintiff's rather conceptually loose reliance on the interplay of inductive reactance and capacitive reactance of a coil at

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[8] A *capacitor* is a device "consisting essentially of two conducting surfaces separated by an insulating material or dielectric such as air, paper, mica, glass, plastic film, or oil. A capacitor stores electrical energy, blocks the flow of direct current, and permits the flow of alternating current to a degree dependent essentially upon the capacitance and the frequency." Graf-*Electronics*, *supra*.

[9] Morecroft, *Principles of Radio Communication* (3d ed. 1933), page 81.

[10] Graf-*Electronics*, *supra*; *Electronics and Nucleonics Dictionary*, *supra*; Terman, *Electronic and Radio Engineering* (4th ed. 1955); *Principles of Radio Communication*, *supra*; Upton, *Electronics for Everyone* (1959); Van Valkenburgh, Nooger & Neville, Inc., *Basic Electronics*, Vols. 1–5 (1st ed. 1955).

resonant frequency,[11] one must finally consider the term "choke",[12] which Mr. Friberg stated is applicable to these imported coils, and the useful characteristic of these imported coils at self-resonant frequency, namely, their reactance. A reactance coil is a "reactor".[13] The terms "choke" and "reactor" are both legislatively recognized exemplars of inductors.

The *eo nomine* classification of inductors, electrical capacitors (item 685.80), and resistors (item 686.10) appears for the first time in TSUS. TSUS does not classify reactors *eo nomine*. The TSUS superior headings classifying inductors, electrical capacitors and resistors are, however, substantially the same as the Brussels Nomenclature headings 85.01, 85.18, and 85.19 classifying inductors, electrical capacitors and resistors. The Brussels Nomenclature does not classify "reactors" *eo nomine*. The Tariff Classification Study of TSUS gives no history of what Congress intended to be covered by the term "inductors". Since the Brussels Nomenclature exerted the greatest influence on the arrangement of TSUS,[14] it appears that the term was derived from the Brussels Nomenclature. The Brussels explanation of the term "inductors" is, therefore, persuasive history of what Congress intended when it used the same term in TSUS. *Herbert G. Schwarz, dba Ski Imports* v. *United States*, 57 CCPA 19, 22, C.A.D. 971, 417 F. 2d 1391 (1969). Brussels Nomenclature heading 85.01, in an explanatory note, relevantly headed, states as follows:

> (VI) Inductors (e.g., Reactors and Chokes)
>
> These consist essentially of a single coil of wire which, inserted in an A.C. circuit, limits or prevents by its self-induction the flow of the A.C. They vary from small chokes used in wireless circuits, instruments, etc., to large coils often mounted in concrete, used in power circuits (e.g., for limiting the flow of current in the event of a short circuit). [Explanatory Notes to the Brussels Nomenclature (1955), Vol. III, page 928.]

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[11] Conceptually loose because there is no factual evidence and none of the authorities I have consulted tend to counter the presumption that the inductive and capacitive reactance forces of a coil flow from or are the result of induced electromagnetic forces. *Cf. Knowles Electronics* v. *United States*, 62 CCPA 1, C.A.D. 1134 (1974).

[12] The term "choke" is defined as an "inductance used in a circuit to present a high impedance to frequencies above a specified frequency range without appreciably limiting the flow of direct current. Also called choke coil." *Electronics and Nucleonics Dictionary, supra*. A choke coil also called "impedance coil" is defined as "an inductor (reactor) used to limit or suppress the flow of alternating current without appreciable effect on the flow of direct current." Graf-*Electronics, supra*.

[13] *Webster's Third New International Dictionary* (1968). The term "reactor" is defined as a "device that introduces either inductive or capacitive reactance into a circuit such as a coil or capacitor." *Electronics and Nucleonics Dictionary, supra*, and as a "physical device used primarily to introduce reactance or susceptance into a branch." Graf-*Electronics, supra*, see also, *Webster's Third New International Dictionary* (1968), and compare, "reactor • • • 3: a coil, winding, or conductor of small resistance and large inductance used in an alternating-current circuit to impede or throttle the current or to change its phase" with, "inductor • • • 2a: an inductance coil or reactor".

[14] Tariff Classification Study, Submitting Report, page 8.

Weighing the evidence that the useful characteristic of these imported coils in the video IF section of a television receiver is their "reactance" at resonant frequency; that a reactance coil is a "reactor", and that in the lexicon of electronics as well as the legislative history, the terms "choke", "reactance", and "reactor" appear to be more closely associated with inductance and "inductors", than with capacitance and "capacitors", I conclude that plaintiff has failed to overcome the presumption of correctness attaching to the classification of these imported coils as inductors. The protests herein consolidated are, accordingly, overruled and the action is dismissed.

Judgment will enter accordingly.

(C.D. 4608)

OXFORD INTERNATIONAL CORPORATION *v.* UNITED STATES

Bicycle taillights

Taillights, containing bulbs operated by battery and with metal mounting brackets for attachment to the rear frame or fender of a bicycle, from which a red glow is emitted by reflection of the light off the metal surface, were properly classified as illuminating articles under item 653.40 of the tariff schedules dutiable at the rate of 19 per centum ad valorem, and not as electrical visual signalling devices under item 685.70 at 8.5 per centum ad valorem, as claimed by plaintiff.

ILLUMINATING ARTICLES

Under item 653.40 of the tariff schedules, an illuminating article contemplates one that contains a light which when operated lights up something other than itself, and that its lighting functions are necessary to the article's use. *Ross Products, Inc.* v. *United States*, 433 F. 2d 804, 58 CCPA 1, C.A.D. 994 (1970). The taillights at bar light up not only the taillights, but also a portion of the bicycle and the roadway behind the bicycle.

SAMPLES

An examination of the taillights clearly reveals their capacity to illuminate. Their character and design establish their primary use. See *Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, C.D. 4409 (1973). That samples of imported merchandise are potent witnesses in the determination of their proper classification is a principle long accepted by the court. *United States* v. *The Halle Brothers Co.*, 20 CCPA 219, T.D. 45995 (1932). The taillights were specifically designed for use with bulbs, and without them possess insufficient reflective capacity to be effective for their intended use.

SIGNALLING DEVICES

Articles enumerated under item 685.70 as signalling devices all call attention to a temporary or abnormal condition. Application of the *ejusdem generis* doctrine of interpretation requires that the general phrase "other sound or visual signalling apparatus" enumerated after the articles in item 685.70 excludes the taillights at bar which operate continuously and which do not warn of the existence of an emergency or special circumstance.

Court Nos. 66/74958, etc.

Port of Chicago

[Judgment in part for defendant.]

(Decided August 27, 1975)

Allerton deC. Tompkins for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Patrick Gill* and *Andrew P. Vance*, trial attorneys), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise manufactured in and imported from Hong Kong. The merchandise consists of three kinds of bicycle taillights invoiced as "Oxford Brand Aluminum Tail Lites #155RJ", "Plastic Tail Lites #156", and "Cycle Direction Signal Tail Lites #140".

The merchandise was classified under item 653.40 of the Tariff Schedules of the United States (TSUS) as:

"Illuminating articles and parts thereof, of base metal:

* * * * * * *

Other:

* * * * * * *

Other"

and was consequently assessed with duty at the rate of 19 per centum ad valorem.

Plaintiff contests the classification, and claims that the taillights are not illuminating articles, but rather, electrical visual signalling devices classifiable under item 685.70 of the tariff schedules which provides for:

"Bells, sirens, indicator panels, burglar and fire alarms, and other sound or visual signalling apparatus, all the foregoing which are electrical and parts thereof".

Hence, plaintiff contends that the proper and legal rate of duty should be only 8.5 per centum ad valorem.

Alternatively, plaintiff claims that, if the court finds the subject merchandise to be neither illuminating articles nor electrical visual signalling devices, then the articles are properly classifiable under item 688.40 (TSUS) as:

> "Electrical articles, and electrical parts of articles, not specially provided for"

with duty at the rate of 11.5 per centum ad valorem. A second alternative claim under item 657.35 (TSUS) has been withdrawn and, therefore, need not be considered.

Defendant concedes that the "Cycle Direction Signal Tail Lites #140" have been erroneously classified, and that they should have been properly classified under item 685.70. No discussion is, therefore, necessary as to these articles, and judgment will be issued accordingly.

Defendant, however, denies the validity of plaintiff's claims as to the "Oxford Brand Aluminum Tail Lites #155RJ", and the "Plastic Tail Lites #156", and maintains that they have been correctly classified.

Essentially, the controverted bicycle taillights consist of cylindrical casings with red-tinted circular lamps at the rear. Each lamp contains a miniature bulb surrounded by a shiny surfaced metal plate encased in a red plastic prism or lens. Inside each casing is a space for a single electric battery (not imported with the article), and a metal spring. The primary difference between the #156 (plaintiff's exhibit 1), and the #155RJ (plaintiff's exhibit 2) is that in the former, the casing is of plastic, while in the latter, it is of aluminum. At the bottom of each taillight unit is a metal mounting bracket which is used to attach the taillight to the rear frame or fender of a bicycle.

The taillights become "effective", i.e., emit a red light, when they are turned on manually. To turn on exhibit 1, the rear lens portion is turned to the right. To turn on exhibit 2, the front end is turned to the right. When the bulb is thus lit, the light is reflected from the metal surface.

In addition to plaintiff's illustrative samples, and two exhibits submitted by defendant, the record consists of the testimony of three witnesses, two for plaintiff and one for defendant. Plaintiff's first witness was Mr. Arthur Lipski, president and general manager of plaintiff corporation, whose business is the importation and distribution of bicycle parts and accessories. Mr. Lipski is responsible for the

purchase and distribution of the taillights throughout the United States. He testified that he has seen them in use throughout the United States, and has observed their operation in the evening.

Mr. Lipski testified that, for safety reasons, ordinances require that bicycles be equipped with either "reflectors" or taillights to warn oncoming vehicles of the presence of a bicycle. He stated that the lamp portion did not make the taillights more than warning devices; it merely made them more effective warning devices. He explained:

> "[the shiny metal surface surrounding the bulb was] designed to catch any reflections whether or not the battery was in operation. This is similar to a regular reflector that you might put on a bicycle; we now illuminate it with the use of a battery."

Moreover, he stressed that the taillights cannot be used to illuminate other objects. When challenged on cross-examination, he stated that the only portion of a bicycle illuminated by them is a portion of the rear fender—which is only visible for a short distance.

The testimony of plaintiff's second witness, Mr. Robert Teller, sales manager of plaintiff corporation, substantiated the points made by Mr. Lipski. In particular he stated that the taillights are attached to the "rear fork sections of the bicycle, facing to the rear" in order:

> "to warn automobiles in back that there is a bicycle, a rider in front of them. It's self-illuminating and the reflectorized light gives that signal, that warning signal that there is somebody ahead on, on a bicycle."

Further, he stated that without the bulb, the taillights will act as "reflectors" and reflect automobile headlights a distance of 75 to 100 yards back.

Defendant's witness, Mr. Charles Bishop explained the differences between the taillights at bar, and "reflectors" (defendant's exhibit A), and the similarities between the present taillights and articles called combination headlights (defendant's exhibit B). Mr. Bishop's expertise was based on his observation of their use throughout the United States, and the following qualifications: President of Bright Star Industries, Incorporated, which manufactures dry cell batteries, flashlights, and bicycle reflectors; president of Kent Energy Corporation, a subsidiary of Bright Star Industries, which imports batteries, lanterns, and flashlights; member and past chairman of the National Electrical Manufacturers Association; member of the American National Safety Institute, which writes battery and flashlight specifications; and past director of the Bicycle Institute of America.

Mr. Bishop testified that defendant's exhibit A is a highly technical item, and stated:

> "it's a crysmatic reflector, molded with pins, so that light, when it hits the surface; goes through; is bent in different directions by the pins in the back and reflected back into the light source, and also out at twenty degree angles in all directions."

He further testified that it has no self-contained energy source. Moreover, industry specifications require that it be able to reflect light back 600 feet in a "volume visible in the low beams of an automobile." He also stated that articles such as plaintiff's exhibits 1 and 2 do more than reflect, they:

> "will illuminate, to a certain extent, light out to a 90 degree angle; perhaps small portions of the rear of the bicycle and the ground; and depending upon the bulb, or miniature lamp which is used, this light could be increased or decreased."

The witness then analogized the operation of plaintiff's exhibits to that of defendant's exhibit B, a combination headlight and taillight. Exhibit B is similar in appearance and method of operation to plaintiff's exhibits, and is also used at night. The primary difference is that defendant's exhibit is equipped with a clear lens, as well as a red lens, thereby enabling it to function as a headlight as well as a taillight. Exhibit B is considered by the witness to be an illuminating article. Further, he declared that both the battery and bicycle industries would also consider plaintiff's exhibits to be illuminating articles.

The presumption of correctness that attaches to the classification of the district director of customs requires no extended discussion. Suffice it to say that the presumption attaches not only to the ultimate conclusion of the customs official, but also to all subsidiary facts found in support of that conclusion. *United States* v. *New York Merchandise Co., Inc.*, 435 F. 2d 1315, 58 CCPA 53, C.A.D. 1004 (1970). By virtue of the presumption the burden of proof is upon the one who contests the director's classification. Hence, the plaintiff must disprove the correctness of the classification, and establish the correctness of its own claim.

The basic question, therefore, is whether the controverted taillights are "illuminating articles" within the meaning of item 653.40, TSUS. If plaintiff has not established that the headlights are not illuminating articles it cannot prevail for it has not succeeded in proving that the classification of the customs official is erroneous.

Since the record does not establish a commercial designation for the words "illuminating articles" the common and ordinary meaning must control. *Swan* v. *Arthur*, 103 U.S. 597, 598 (1881); *United States* v. *Victoria Gin Co., Inc., et al.* 48 CCPA 33, 35, C.A.D. 759 (1960);

Borneo Sumatra Trading Co., Inc. v. *United States*, 64 Cust. Ct. 185, 188, C.D. 3980 (1970).

The meaning of "illuminating articles" encompassed by item 653.40, TSUS, was examined by the Court of Customs and Patent Appeals in *Ross Products, Inc.* v. *United States*, 433 F. 2d 804, 58 CCPA 1, C.A.D. 994 (1970). In the *Ross* case, the question presented was whether certain decorative planters, in the form of simulated bird cages containing a number of plastic roses with small electric bulbs inside, were properly classified under item 653.40. For guidance, the court looked to *United States* v. *General Display Case Co., Inc.*, 21 CCPA 542, C.A.D. 3708 (1934), a case decided under paragraph 218(c) of the Tariff Act of 1930, which dealt with articles used "in connection with artificial illumination". In the *General Display* case, before finding that "hollow cylindrical glass units with colored decalcomania" were not within paragraph 218(c), the court stated:

> "the provision for illuminating articles to be used in connection with artificial illumination includes only such articles as are chiefly used in connection with artificial illumination for illuminating purposes. If they are chiefly used for some other purpose * * * and if the illumination provided by them is minor and incidental, only, to their chief use, and [the articles] are not intended for or used for the purpose of illuminating the surrounding atmosphere, then they should not be classified as illuminating articles, under said paragraph 218(c)." 21 CCPA at 546.

Applying the foregoing reasoning to item 653.40 of the tariff schedules, the court, in the *Ross* case, stated:

> "that the use of the articles is a significant factor in item 653.40 * * * [and, that] in order to serve as an 'illuminating article', the article must be used to 'light up' something other than itself." 58 CCPA at 4–5.

Thus, considering the facts of record in *Ross*, the court concluded that the decorative planters were not illuminating articles but:

> "basically decorative articles * * * useful as decorations in lighted areas as well as in the dark with their bulbs unlighted as well as lighted. The function of the lights is to enhance the decorative effect of the articles by serving as a part of the artificial flowers as well as by furnishing illumination to the articles themselves. Any lighting of the surrounding space is only incidental to the use of the importations as decorative articles which may be at least partially self-illuminated." 58 CCPA at 5.

In the case at bar the defendant maintains that *Ross* sets forth a two-part definition for an "illuminating article". It submits: (1) that such an article must contain a light which when operated lights up something other than itself, and (2) is an article in which the lighting function is necessary to the article's use. The defendant, therefore,

asserts that an examination of the taillights reveals an illuminating capacity which is both critical and necessary to their operation. In its brief it states:

> "Plaintiff's exhibits have a built-in reflector but cannot reflect more than 75 to 100 yards, without the illumination of the bulb inside. This reflective capacity of the taillights is insufficient to warrant their use at night without a light bulb. The taillights are not usable, therefore, unless lighted, and this establishes the second element in the definition for "illuminating articles" in *Ross, supra.*"

The plaintiff also relies upon the holding in the *Ross* case. It, on the other hand, argues that, although the taillights must be lit in order to perform their function as warning devices, any light given off to the surrounding area is merely incidental to their primary function as electrical visual signalling devices. Moreover, plaintiff contends that the light generated by the taillights is neither designed nor used for the illumination of the surrounding area. Hence, plaintiff claims that they cannot be deemed illuminating articles within the purview of item 653.40.

The court agrees with the defendant's view of the meaning of the *Ross* case. The holding in *Ross* does not require that the primary function of the articles be as illuminating articles. Furthermore, the illumination cast by the decorative planters in the *Ross* case was incidental to their chief use because it merely enhanced the decorative effect of the articles. The planters were usable as planters in lighted as well as unlighted areas regardless of whether the bulbs were lit or unlit.

The taillights in the present case satisfy both of the requirements outlined in *Ross*. Defendant's witness attests to the fact, and plaintiff's witnesses agree, that the light cast by the taillight's bulb lights up not only the taillight, but also a portion of the bicycle and the roadway behind the bicycle. Moreover, an examination of the taillights clearly reveals their capacity *to illuminate*. When turned on in a darkened room they cast a beam of light which illuminates objects in the surrounding area. The red color of the light does not negate its ability to illuminate. It is merely the color customarily used for taillights.

That samples of imported merchandise are potent witnesses in the determination of their proper classification is a principle long accepted by this court. See *United States* v. *The Halle Brothers Co.*, 20 CCPA 219, T.D. 45995 (1932). Indeed the character and design of the sample itself may compel a finding as to the primary use of the merchandise. *Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, C.D. 4409 (1973).

It is clear from the record that the lighting function is necessary to the use of the taillights. Although plaintiff contends that the taillights

can be used as warning devices with their bulbs unlit, as well as lit, in much the same manner as "reflectors" (defendant's exhibit A, for example), the court does not agree. To the contrary, the court finds that the taillights have been specifically designed for use with bulbs, and that without their bulbs lit, possess insufficient reflective capacity to be effective for their intended use.

Testimony indicates that they cannot be used as "reflectors". "Reflectors" are highly technical items capable of reflecting light back 600 feet. However, plaintiff's exhibits, when unlit, have a reflective capacity of only 75 to 100 yards. In fact, the function of the red prism appears to be largely the coloration and diffusion of the light cast by the bulb, a function far closer to that served by the red lens on the combination headlight-taillight, than the refraction and reflection of light performed by "reflectors".

As stated in *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, 223, C.D. 4433 (1973):

> "Certainly, any light which is used on a moving object at night on a public road, and is visible for more than a few feet may be said to be a signal to the extent that it notifies others of the latter's presence. But the lamps at bar do more than merely serve as a signal; they also function as illuminating devices."

Thus, *Trans-Atlantic Co.* v. *United States*, 471 F. 2d 1397, 60 CCPA 100, C.A.D. 1088 (1973), cited by the plaintiff, has no relevance to the case at hand. In *Trans-Atlantic*, merchandise consisting of "single action spring hinges" was classified as hinges, n.s.p.f. under item 647.03, TSUS. Plaintiff-appellant argued that:

> "the device in question is 'a kind of hinge' but * * * it 'is more than a hinge'—it also closes the door and is, therefore, 'a kind of door closer' [60 CCPA at 101]";

and should be classified as a door closer under item 646.95, TSUS. The Court of Customs and Patent Appeals rejected plaintiff's argument stating that "the articles at bar are hinges within the ordinary understanding of that term" and that:

> "Improvement in the design of an article having an eo nomine classification which enables it to perform an additional function does not militate against its continuing to be a form of the named articles. Under the tariff acts, articles are classifiable on the basis of their primary design, construction and function, even though they are capable of performing other auxiliary or incidental operations." 60 CCPA at 103.

It has been clearly established that the taillights are not effective without the use of their bulbs. Illumination is not a function additional

to or separate from the primary function of the taillights. Hence, it cannot be minimized and dismissed as auxiliary or incidental.

The instant case is distinguishable from *Amico, Inc.* v. *United States*, 71 Cust. Ct. 182, C.D. 4494 (1973) also cited by plaintiff. There it was decided that articles invoiced as "Handy Clown Flashlights" were properly classifiable as toys, under item 737.90, rather than as flashlights, under item 683.70. Headnote 1 of schedule 7, part 5, subpart E, TSUS, directs that a "toy" be so classified, even if also encompassed by another provision which is more specific (e.g., flashlights). Hence, in the *Amico* case, the sole issue was whether the imported articles were chiefly used for the amusement of children.

The uncontradicted testimony in the *Amico* case indicated that the articles were usable as playthings whether their lights were lit or unlit. The purpose of the light emitted by the flashlight was the projection of a clown's smiling face image on a darkened area. It was neither intended nor used as a flashlight to illuminate. Indeed, it was useless as a flashlight. Furthermore, the tariff provision in the present case differs from those that governed the *Amico* case. Item 653.40 pertaining to illuminating articles, requires only that an article cast a beam of light whose illuminating function is necessary to the article's chief use.

It is beyond dispute that the taillights perform a function analogous to that of automobile taillights. This is significant because automobile taillights were unquestionably intended by Congress to be classified as motor vehicle lighting equipment. This is revealed by House Report No. 342, 89th Cong., 1st Sess. (1965), which accompanied the Tariff Schedules Technical Amendments Act of 1965. At page 25 of that report, it is stated:

> "Subsection (h) of Section 30 sets up a new item for lighting equipment designed for motor vehicles, and parts thereof * * *. This new item 683.65 applies principally to equipment presently covered by item 653.40 [the catchall provision covering "other" illuminating articles] * * *.
>
> "The new item will apply, for example, to headlamp assemblies consisting of sealed beam units and their frames and mountings. * * *
>
> "[However], [t]he new provision is not limited to headlight assemblies; it also covers other motor vehicle lighting equipment such as taillight assemblies and parking light assemblies."

In the *Summaries of Trade and Tariff Information* (1969), Schedule 6, Volume 10, it is indicated that the articles included in new item 683.65, the basic electrical lighting equipment used in the manufacture of motor vehicles, were drawn from articles previously classified as

illuminating devices. This court has often relied on the *Summaries* as an accurate indicia of congressional intent.

Also pertinent is *British Auto Parts, Inc.* v. *United States*, 63 Cust. Ct. 105, C.D. 3882 (1969) which includes the following definition of lighting equipment from Pender & Delmar, *Electrical Engineers' Handbook* (4th ed. 1953):

> "Lighting equipment on most automotive vehicles includes not only equipment legally required in most states, such as *head-*, *tail-*, and *license-plate lamps*, but numerous supplementary *lamps* [as well] * * *." 63 Cust. Ct. at 108–109.

Clearly, therefore, motor vehicle taillights, now classifiable under a special provision for motor vehicle lighting equipment, were formerly classifiable as illuminating articles.

In support of its position, plaintiff places much reliance upon the case of *Fedtro, Inc.* v. *United States*, 449 F. 2d 1395, 59 CCPA 16, C.A.D. 1028 (1971). In the *Fedtro* case the Court of Customs and Patent Appeals determined that the phrase "sound or visual signalling apparatus" in item 685.70, TSUS, included "four-way flasher switches" used to connect the front and rear signal lamps of an automobile with the flasher circuit for the directional signals so that all four lamps flashed simultaneously.

The appellate court found the Customs Court interpretation of "signalling apparatus" as items used "by one person to communicate with or signal to another" to be unduly restrictive insofar as:

> "It would exclude articles such as traffic signals, automatic fire alarms, and other warning devices which are commonly thought of as signalling apparatus even though they are not used by one person to communicate with or signal to another." 59 CCPA at 18–19.

Plaintiff contends that this language extended the coverage of item 685.70 to articles such as the controverted taillights. Bicycle taillights, however, which cast a steady continuous beam of light, are, as were the horn-lights in *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973), readily distinguishable from the four-way flasher switches, and the devices characterized as signalling devices by the appellate court in the *Fedtro* case. The flasher switches, parts of automobile "emergency flasher systems" are used in emergencies, such as alerting vehicles and pedestrians of the presence of a disabled vehicle. Traffic signals and fire alarms likewise function in a manner which calls attention to emergency or temporary conditions. Bicycle taillights, however, which function continuously from dusk to dawn, are not in the same category.

The doctrine of *ejusdem generis* supports the interpretation that item 685.70 encompasses only those devices whose function is to call attention to temporary or abnormal conditions. The doctrine means:

> "that where general words follow terms designating specific or particular things, persons, or subjects, the general words are to be construed as including only those things, persons or subjects which are of the same kind, class or species as those specifically enumerated." *Nomura (America) Corp.* v. *United States*, 299 F. Supp. 535, 540, 62 Cust. Ct. 524, 530, C.D. 3820 (1969), *aff'd*, 435 F. 2d 1319, 58 CCPA 82, C.A.D. 1007 (1971).

In item 685.70, the general phrase "other sound or visual signalling apparatus" is preceded by the following enumeration: "Bells, sirens, indicator panels, burglar and fire alarms". All of the named devices are activated or function in temporary or abnormal situations only. Thus, the general provision "other sound or visual signalling apparatus" must exclude articles which operate continuously, and which do not warn of the existence of emergencies or special circumstances. Taillights light up the rear end of a bicycle to make it visible to oncoming cars. Since they do not fall within the category, they are not sound or visual signalling apparatus within the ambit of item 685.70.

On the record before the court, and its study of the competing tariff provisions, the court has concluded that the taillights at bar are illuminating articles as classified by the customs officials. Inasmuch as it is the determination of the court that the subject importations have been correctly classified as illuminating articles, no further consideration need be given plaintiff's claims for classification under items 685.70 or 688.40 of the tariff schedules.

The protests are consequently overruled, except as to those articles invoiced as "Cycle Direction Signal Tail Lites #140" which are to be classified under item 685.70 of the tariff schedules.

Judgment will issue accordingly.

(C.D. 4609)

SANDVIK STEEL, INC. *v.* UNITED STATES

Angles, shapes, and sections—Shoe die knife steel

ANGLES, SHAPES, AND SECTIONS—PRODUCT NOT CONFORMING TO THE SPECIFICATIONS FOR STRIP—SHOE DIE KNIFE STEEL

Shoe die knife steel, a material advanced beyond strip and dedicated to use in the manufacture of clicker dies, is a product

which does not conform completely to the specifications for strip set forth in headnote 3(h), schedule 6, part 2, subpart B, and therefore falls within the definition of the term "angles, shapes, and sections" in headnote 3(j). Such material is more specifically provided for under item 609.84 or item 609.88, depending upon the weight per linear foot, than under the basket provision in item 657.20 for articles of iron or steel not more specifically provided for elsewhere in the tariff schedules.

SAME—MATERIAL DEDICATED TO PARTICULAR USE

Even if a product is advanced beyond strip to the point of dedication to a particular use, such product may be classifiable as angles, shapes, and sections, so long as the article remains material. *Cf. Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F.Supp. 1392 (1972). See also: *John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974); *Trans-Atlantic Company* v. *United States*, 70 Cust. Ct. 243, C.D. 4459 (1973); and *Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F.Supp. 14 (1969).

ANGLES, SHAPES, AND SECTIONS—DEFINED IN HEADNOTE 3(j)—COMMERCIAL MEANING NOT CONTROLLING

In construing the term "angles, shapes, and sections", commercial meaning is not controlling in view of the statutory definition in headnote 3(j). *Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party-in-Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F.Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972).

Court Nos. 66/19351, etc.

Port of New York

[Judgment for plaintiff.]

(Decided September 8, 1975)

Rode & Qualey (*John S. Rode* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

NEWMAN, Judge: This action (covering 104 consolidated protests) concerns the proper dutiable classification of "shoe die knife steel", also referred to as "clicker die steel", imported from Sweden during the period of September 1963 through March 1969, and entered at the port of New York.

The merchandise was assessed with duty at the rates of 19, 17, or 15 per centum ad valorem, depending upon the date of entry, pursuant to item 657.20 of the Tariff Schedules of the United States, or under item 657.20 as modified by T.D. 68-9, covering articles of iron or

steel which are not more specifically provided for elsewhere in the tariff schedules.

Plaintiff claims that the merchandise is more specifically provided for as "angles, shapes, and sections" under item 609.84 or item 609.88, TSUS, or under item 609.84 or item 609.88 as modified by T.D. 68–9, depending upon the weight per linear foot, and accordingly is properly dutiable at the following rates, depending upon the date of entry: respecting the steel weighing over 0.29 pound per linear foot, 7.5, 7, or 6.5 [sic] per centum ad valorem; respecting the steel weighing not over 0.29 pound per linear foot, 8.5, 8, or 7.5 [sic] per centum ad valorem.[1]

I have concluded that plaintiff's claimed item numbers should be sustained.

STATUTES INVOLVED[2]

Assessed under:

Schedule 6, part 3, subpart G:

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

Articles of iron or steel, not coated or plated with precious metal:

* * * * * * *

Other articles:

* * * * * * *

657.20 Other * * *

Claimed under:

Schedule 6, part 2, subpart B:

Part 2 headnotes:

1. This part covers * * * base metals * * * and their so-called basic shapes and forms * * *.

* * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, of parts of articles.

* * * * * * *

[1] The respective rates of duty in 1969 under items 609.84 and 609.88 as modified by T.D. 68-9 were 7 and 8 per centum ad valorem, rather than 6.5 and 7.5 per centum ad valorem, as claimed by plaintiff.

[2] The applicable rates of duty are omitted as they depend upon the date the merchandise was entered. The reduced rates are predicated upon T.D. 68-9.

Subpart B headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms and in addition covers iron or steel waste and scrap.

* * * * * * *

3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms having the meanings hereby assigned to them.

* * * * * * *

(j) Angles, shapes, and sections: Products which do not conform completely to the respective specifications set forth herein for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products.

* * * * * * *

Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not drilled, punched, or otherwise advanced; sheet piling of iron or steel:

Angles, shapes, and sections:

Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:

* * * * * * *

Drilled, punched, or otherwise advanced:

609.84 Other than alloy iron or steel_____ * * *

* * * * * * *

Cold formed and weighing not over 0.29 pound per linear foot:

609.88 Other than alloy iron or steel_____ * * *

THE RECORD

The record includes: the incorporated record in *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F. Supp. 1031 (1971), an oral stipulation of the parties, the testimony of one witness for each of the parties,[3] various exhibits, and the official papers.

[3] Plaintiff's witness was Darrel Dean Biegert, its sales manager for industrial products, who also testified in the prior incorporated case. Defendant's witness was Lewis T. Gibbs, an executive of United States Steel Corporation.

There is no dispute as to any of the material facts.

Briefly, the record establishes that the merchandise is similar in all material respects to the shoe die knife steel in the prior *Sandvik* case; that the merchandise is composed wholly of steel, as that term is defined in headnote 2(g), schedule 6, part 2, subpart B; that the merchandise is cold rolled strip in coils, between 0.05 inch and 0.125 inch in thickness, and between 0.54 inch and 2.0 inches in width, having one or two cutting edges, in one of six types of profiles. In some specifications, the merchandise has gone through a section rolling process to provide a bevel configuration on the strip steel. The weight per linear foot of the merchandise in each of the entries is established by the official papers, which were received in evidence without objection.[4] Additionally, the merchandise is dedicated for and solely used in making clicker dies, which are employed in the cutting of various materials. In the prior *Sandvik* decision, the undersigned writing for the court found (66 Cust. Ct. at 15):

> It appears that shoe die knife steel is manufactured into dies by cutting pieces from the long coils to shorter lengths (⅛ inch to 10 feet), bending the pieces in a machine to the desired pattern or configuration, and securing the shape of the bent pieces by welding them with braces or screwing them into a board base. The imported knife steel is used to make dies "of an unending variety of shapes and sizes."

Contentions of the Parties

Plaintiff urges that the shoe die knife steel is a material which requires substantial further manufacture to form a finished product suitable for its intended use (clicker dies); that shoe die knife steel falls within the definition of angles, shapes, and sections in headnote 3(j), inasmuch as it is made from strip but does not conform completely to the definition of strip in headnote 3(h);[5] and that items 609.84 and 609.88 are more specific provisions for the merchandise than is item 657.20.

Defendant, however, contends (brief, page 5) that the merchandise "although unquestionably a material for the manufacture of clicker dies and not yet advanced to the point of being unfinished knife or cutting blades, has been advanced to the status of articles of steel". Also, defendant urges (brief, page 6) that "shoe die knife steel would not be considered to be an angle, shape, or section by the domestic steel industry and, therefore, should not be considered such for purposes of tariff classification".

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[4] The official papers, when offered and received in evidence without objection, may be considered by the court in the exercise of sound discretion for the truth of the matters recited. *W. T. Grant Company* v. *United States*, 38 CCPA 57, C.A.D. 440 (1950); *Israel Menchaca* v. *United States*, 48 Cust. Ct. 276, C.D. 2349 (1962).

[5] See footnote 7.

OPINION

1.

In the prior *Sandvik* case, defendant successfully contended that shoe die knife steel is a "material" for making clicker dies, and therefore is not classifiable as unfinished [6] knives and cutting blades for power or hand machines under item 649.65 or item 649.67. While the Government's classification under item 657.20 prevailed in the prior case, plaintiff's present claims were not before the court. Consequently, the prior *Sandvik* case is not dispositive of the present issue.

As is evident from their respective contentions, neither party presently contests the prior ruling that the shoe die knife steel is a material rather than unfinished knives and cutting blades. In point of fact, plaintiff now relies upon that prior ruling to sustain its present claim that the merchandise is properly dutiable under the provisions for angles, shapes, and sections.

Defendant, however, insists that although the shoe die knife steel is a material, as successfully contended in the prior *Sandvik* case, nevertheless the subject merchandise is too far advanced to be classifiable as angles, shapes, and sections.

2.

Inasmuch as item 657.20, under which the merchandise was assessed, is a "basket" provision for articles of iron or steel "not more specifically provided for elsewhere in the tariff schedules" (headnote 1, schedule 6, part 3, subpart G), the dispute concerns the question of whether the shoe die knife steel is "more specifically provided for" as angles, shapes, and sections.

As statutorily defined in headnote 3(j), the term "angles, shapes, and sections" includes "products which do not conform completely to the respective specifications set forth herein for * * * strip * * *". Although the shoe die knife steel was made from strip, there is no dispute that the merchandise in its condition as imported does not conform completely to the specifications for strip set forth in headnote 3(h).[7] Hence, the merchandise falls squarely within the definition of angles, shapes, and sections in headnote 3(j).

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[6] Pursuant to General Interpretative Rule 10(h).

[7] "Strip" is defined in headnote 3(h) as follows:

(h) *Strip:* A flat rolled product whether or not corrugated or crimped, in coils or cut to length, under 0.1875 inch in thickness, and if cold rolled, over 0.50 inch but not over 12 inches in width, or, if not cold rolled, not over 12 inches in width.

Plaintiff states that the shoe die knife steel does not completely conform to the specifications for strip in headnote 3(h), inasmuch as the merchandise is not flat. Moreover, by virtue of the Government's classification under item 657.20, it is presumed that the merchandise does not conform completely to the specifications for any of the forms of iron or steel defined in headnote 3.

Pistorino & Company, Inc. v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972), is a case in point construing the provisions for angles, shapes, and sections. There, metal stampings or blanks made from strip, dedicated to use in the manufacture of latch needles (knitting machine needles), which required substantial additional processing, were held properly dutiable as angles, shapes, and sections under item 609.88 rather than as unfinished latch needles under item 670.58. Pertinent to the present case are the following comments by Judge Ford, writing for the Second Division (69 Cust. Ct. at 53–54):

> * * * According to the Tariff Classification Study, Schedule 6, page 89, subpart B sets forth an orderly systematic arrangement which would apply to iron and steel, their alloys, and their basic shapes and forms in addition to iron and steel waste and scrap. It therefore logically follows that the provision for angles, shapes and sections includes a more advanced product than item 609.13 [strip] * * * *but is still a material. Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F.Supp. 14 (1969). It is to be noted that the superior heading to item 609.88 includes the language "whether or not drilled, punched, or otherwise advanced." This is a clear indication that an advancement even to the point of dedication was intended to be included therein *so long as the article still remains material. Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party in Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F.Supp. 750 (1970) [*aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972)]. [Emphasis added.]
>
> We have no difficulty in finding that the imported blanks are shapes which do not conform to the specifications set forth in headnote 3, schedule 6, part 2, subpart B. We further find that said blanks are dedicated to use as latch needle blanks but are not unfinished latch needles. * * *

John V. Carr & Son, Inc. v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974), is another decision construing the term "angles, shapes, and sections". In *Carr*, certain side rails dedicated for and solely used as parts of railroad hopper cars were held properly dutiable as "parts" of railroad or railway cars under item 690.15, rather than as "angles, shapes, and sections" under item 609.80. Judge Maletz rejected the plaintiff's argument that the rails were materials requiring substantial further processing, finding instead that "in their imported condition, the involved rails were virtually ready for use only as a part of the railroad stock described in item 690.15 requiring as they did merely insubstantial further processing" (72 Cust. Ct. at 25). Significantly, the court also stated:

> It may well be that most angles, shapes, and sections are *ultimately* dedicated and used as parts of articles and that such *ultimate* use determines the form in which the angles, shapes and sections are made. See *United States* v. *The Singer Manufacturing*

Company, 37 CCPA 104, 106, 107, C.A.D. 427 (1950). But this scarcely means that all angles, shapes and sections are parts *per se*. Thus, if in its imported condition, an angle, shape or section has been processed or advanced in manufacture *only* to a point where substantial additional processing is necessary before it can be used as a part of a given article, the import would not be classifiable as a "part," but rather would be considered a material and thus (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections. See e.g., *United States* v. *The Singer Manufacturing Company*, *supra*, 37 CCPA 104; *Associated Metals & Minerals Corp.* v. *United States*, *supra*, 65 Cust. Ct. 586.

* * * * * * *

Moreover, even though many angles, shapes and sections may be advanced to the point where they are dedicated to use as parts, they still would be classifiable under the provisions for angles, shapes and sections if no specific provision for the part exists. For example, in *Commercial Shearing & Stamping Company* v. *United States*, *supra*, it was held that hemispherical shapes or heads—which were chiefly used as end closures on pressure containers designed and used for the transport and storage of compressed gases—were properly classified by the government as angles, shapes and sections under item 609.80—the same item that is involved here—rather than as articles of iron or steel, not specially provided for, under item 657.20, as claimed by plaintiff. While the record showed that the imported merchandise was a part of a metal pressure container designed and used for the transport and storage of compressed gases, item 640.10, which covers such containers, does not provide for parts. [Footnote reference omitted.] For that reason, classification of the imported shapes as a part under item 640.10 was precluded and the articles were held properly classified as angles, shapes and sections under item 609.80—which item, the court held, was relatively more specific for the hemispherical shapes, in the condition imported, than item 657.20, the general provision for articles of iron or steel, not specially provided for.

In a situation analogous to the facts here, where "shoe sections of steel" required cutting to size and other processing, the Bureau of Customs ruled in 1964 (T.D. 56377(48)):

> Shoe sections of steel, not alloyed, unfinished, delivered from a steel mill in sections of 20 to 30 feet, in a sort of tee form with one arm of the tee extended, *which, after importation, will be cut to size drilled, and heat treated into replacement parts for crawler type tractors*, classifiable under the provision for Angles, shapes, and sections * * * hot rolled * * *; Not drilled, not punched, and not otherwise advanced: Other than alloy * * * steel, in *item 609.80* TSUS. [Emphasis added in part.]

The parties have cited two additional cases wherein the involved merchandise was held excluded from the provisions for angles, shapes, and sections, viz: *Trans-Atlantic Company* v. *United States*, 70 Cust.

Ct. 243, C.D. 4459 (1973) (iron shelf brackets); and *Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F.Supp. 14 (1969) (wading pool walls). These cases, however, are readily distinguishable from the facts in the present case inasmuch as the shelf brackets in *Trans-Atlantic* and the wading pool walls in *Burn Strauss* were both finished, ready to use articles of commerce rather than materials requiring further processing. Thus, in *Trans-Atlantic* the court commented (70 Cust. Ct. at 248):

> Defendant contends that while the rolled tee, from which the shelf bracket is made, is a basic shape or form, the importation is a completely fabricated article upon which no further work is required to fit it for its specific use and therefore is an article of commerce and no longer a basic shape or form. *Stengel* v. *United States*, 2 Ct. Cust. Appls. 137, T.D. 31663 (1911).
>
> It is noted that the superior heading to item 609.84, *supra*, contains the language "whether or not drilled, punched, or otherwise advanced." This is a clear indication of an intent to include an advancement even to the point of dedication so long as the article remains material. *Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party-in-Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067 (1972).
>
> The imported merchandise is without dispute a finished article known in the trade as a shelf bracket. It has therefore passed the state of being material and is in fact a separate and distinct article of commerce. Such an article is not within the purview of item 609.84, *supra*.

Finally, in *Commercial Shearing*, cited *supra* in *Pistorino, Carr* and *Trans-Atlantic*, Judge Landis, writing for the Third Division, commented respecting "finished" articles dedicated to a particular use (65 Cust. Ct. at 104):

> We read TSUS to concede that the term "angles, shapes, and sections" may apply to articles finished in the sense that their shape and size dedicate them to a particular use or, minimally, dictate what they can be used for and, therefore, to classify them by the degree to which they have been advanced toward any use. Unless such a literal interpretation is placed upon the relevant classifying terms, the distinction between angles, shapes, and sections "not drilled, not punched, and not otherwise advanced", in TSUS item 609.80, and angles, shapes, and sections "drilled, punched, or otherwise advanced", in TSUS item 609.84, is meaningless. * * *

It is clear from the above mentioned cases that the provisions for angles, shapes, and sections include a more advanced product than strip, and that dedication to a particular use does not preclude classification of a material as angles, shapes, and sections. Since the shoe die knife steel is concededly a material and falls within the statu-

tory definition of angles, shapes, and sections in headnote 3(j), I perceive no basis in the cases cited for relegating the classification of the subject merchandise to the basket provision for articles of iron or steel in item 657.20.

3.

I now turn to defendant's contention that "in order to be considered an angle, shape, or section as said terms are known in the domestic steel industry, an article must possess a flange or stiffening member". Defendant's contention is predicated upon the testimony of its witness that "angles, shapes, and sections, in the steel trade terminology in common understanding, are rolled flanged sections for constructional purposes" (R.38).

I find that defendant's position is unsound for the following reasons.

First, neither the latch needle blanks in *Pistorino* nor the tank ends in *Commercial Shearing* possessed a flange or stiffening member, but nevertheless both articles were held classifiable as angles, shapes, and sections. In *Commercial Shearing*, a "flange" having no useful purpose was cut off the hemispherical shape and discarded as waste or scrap metal prior to shipment. Thus, when imported, the tank ends had no flange.

Second, the "flange" referred to by defendant's witness "projects at an angle from the remaining part of the member to give it stiffness and strength" (R.39). However, the "flange" which was present on the tank end after its removal from the press served no useful purpose, and as indicated above, it was cut off and discarded prior to shipment. Therefore, it is apparent that the *Commercial Shearing* article *never* possessed a "flange" in the structural sense, as that term was used by defendant's witness.

Clearly, then, *Pistorino* and *Commercial Shearing* refute defendant's contention that angles, shapes, and sections within the purview of the statute must possess a flange or stiffening member.

It is noted, too, in *Commercial Shearing* the plaintiff contended that angles, shapes, and sections within the purview of the statute were limited to products of a basic steel mill and excluded articles further advanced by processing in a so-called fabricating plant. In rejecting that construction Judge Landis observed (65 Cust. Ct. at 99):

> * * * TSUS having assigned its own meaning to the term "angles, shapes, and sections", the testimony of plaintiff's witnesses and the supporting argument, on the commercial meaning of the term in the integrated basic steel industry producing angles, shapes, and sections, is factually irrelevant. Evidence of the products that the integrated basic steel industry catalogue under that term * * * and the products that are sold under that TSUS term * * * is also irrelevant for the same reason.

Further, in *Commercial Shearing*, Judge Lane writing for the unanimous appellate court concluded with reference to construction of the statute (59 CCPA at 206):

> * * * We further conclude that the tariff meaning in this case is plainly manifest, simple and clear. It is not necessary in such a situation to resort to dictionaries, textbooks, scientific treatises, governmental publications, the Tariff Classification Study, or the provisions of the Brussels Nomenclature. *F.L. Smidth & Co.* v. *United States*, 56 CCPA 77, 409 F.2d 1369, C.A.D. 958 (1969). * * *

Accordingly, I am clear that in construing the term "angles, shapes, and sections", commercial meaning is not controlling in light of the statutory definition in headnote 3(j). Plainly, had Congress intended the narrow restrictive application urged by defendant, it would have expressly so provided. This is especially evident from the fact that the TSUS provisions for angles, shapes, and sections were derived from *both* paragraph 304, Tariff Act of 1930, covering "pressed, sheared, or stamped shapes, not advanced in value or condition by any process or operation subsequent to the process of stamping", and paragraph 312, Tariff Act of 1930, providing for "*structural* shapes".[8] Hence, Congress did not intend to limit the shapes covered by items 609.84 and 609.88 only to *structural* shapes or shapes possessing a *flange or stiffening member*,[9] as urged by defendant.

In conclusion, I agree with plaintiff's position that the shoe die knife steel is properly classifiable under the provisions for angles, shapes, and sections. Defendant has not disputed in its brief that the merchandise was "cold formed" or "otherwise advanced" within the purview of the statute. Since items 609.84 and 609.88 (depending upon the weight per linear foot as shown in the official papers) more specifically provide for the merchandise than item 657.20, the Government's assessment of duty under the latter provision was erroneous.

The protests are sustained, and judgment will issue accordingly.

(C.D. 4610)

SANDVIK STEEL, INC. *v.* UNITED STATES

Angles, shapes, and sections—Conveyor belts and belting

ANGLES, SHAPES, AND SECTIONS—MATERIAL—DEDICATION TO USE

So long as merchandise remains a "material", dedication to a particular use does not foreclose its classification as angles, shapes,

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[8] *Tariff Classification Study Explanatory and Background Materials* (November 15, 1960), schedule 6, page 94.

[9] Note that items 652.93 through 652.96, which were derived from paragraph 312 of the Tariff Act of 1930 cover "Columns, pillars, posts, beams, girders, and similar *structural* units". (Emphasis added.)

and sections under the tariff schedules. *Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972); *John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974).

MATERIAL—CONVEYOR BELTING

Coils of "band steel", which in the "majority" of importations were not precut or marked in any way to indicate the ultimate length of individual conveyor belts and which were placed in plaintiff's warehouse inventory, are a "material". Such merchandise was not dedicated to the making of any particular conveyor belts, and the identity of the individual belts was not fixed with certainty. *Cf. United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933); *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938); *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161 (1971); *Sandvik Steel, Inc.* v. *United States* 75 Cust. Ct. 68, C.D. 4609 (1975). However, band steel made to specification and predestined for specific users is not a "material".

SAME

Conveyor belts, which had been prepared by the Swedish manufacturer for "final jointing", and merely required joinder of the open ends by welding or riveting, were not a "material" since they did not require "substantial further processing or manufacturing". *Cf. John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974).

ANGLES, SHAPES, AND SECTIONS—COLD FORMED—LONGITUDINAL WELDING

Conveyor belting produced by a longitudinal welding process was not "cold formed" within the purview of items 609.84 and 609.86.

ANGLES, SHAPES, AND SECTIONS—ADVANCED—LONGITUDINAL WELDING

Fundamentally, the process by which a shape was created cannot at the same time constitute an "advancement". *Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party-in-Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972). Hence, where conveyor belting was produced by longitudinal welding, such welding did not constitute an "advancement" of the belting.

ANGLES, SHAPES, AND SECTIONS—TYPE OF STEEL

The parties stipulated that the "merchandise is *either* 'steel' or 'alloy iron or steel' as those terms are defined in schedule 6, part 2, subpart B, headnote 2(g) and headnote 2(h)" (emphasis added). Testimony of plaintiff's witnesses established merely that the merchandise was *either* carbon or stainless steel. *Held*, in those

instances where the invoice descriptions failed to identify the type of steel, plaintiff failed to prove whether the merchandise in a particular entry was properly dutiable under item 609.84 or item 609.86

Court Nos. 66/15301, etc.

Port of New York

[Judgment for defendant.]

(Decided September 17, 1975)

Rode & Qualey (*John S. Rode* of counsel) for the plaintiff.
Rex E. Lee, Assistant Attorney General (*John A. Gussow*, trail attorney), for the defendant.

NEWMAN, Judge: This action, covering 28 consolidated protests concerns the proper dutiable classification of merchandise invoiced as "band steel", imported from Sweden and entered at the port of New York.

The merchandise was assessed with duty at the rates of 19 or 17 per centum ad valorem, depending upon the date of entry, pursuant to item 657.20 of the Tariff Schedules of the United States, or under item 657.20 as modified by T.D. 68–9, providing for articles of iron or steel which are not more specifically provided for elsewhere in the tariff schedules.

Plaintiff claims that the merchandise is more specifically provided for as angles, shapes, and sections—drilled, punched, or otherwise advanced—under item 609.84 or item 609.84 as modified by T.D. 68–9, at the rates of 7.5 or 7 per centum ad valorem, depending upon the date of entry; and under item 609.86, or item 609.86 as modified by T.D. 68–9, at the rates of 11.5 or 10.5 per centum ad valorem, depending upon the date of entry.[1] Classification under items 609.84 and 609.86 depends upon, *inter alia*, whether the merchandise is "Other than alloy iron or steel" (item 609.84) or "Alloy iron or steel" (item 609.86).

Plaintiff's additional claims in its complaints under items 608.87 and 608.88, which were not pursued at the trial or in plaintiff's brief, are deemed abandoned.

I have concluded that the protests must be overruled.

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[1] Item 609.86 also imposes "additional duties" (see headnote 4, schedule 6, part 2, subpart B).

STATUTES INVOLVED [2]

Assessed under:

Schedule 6, part 3, subpart G:

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

Articles of iron or steel, not coated or plated with precious metal:

* * * * * * *

Other articles:

* * * * * * *

657.20 Other---------- ***

Claimed under:

Schedule 6, part 2, subpart B:

Part 2 headnotes:

1. This part covers * * * base metals * * * and their so-called basic shapes and forms * * *. * * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

* * * * * * *

Subpart B headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, and in addition covers iron or steel waste and scrap.

* * * * * * *

3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

* * * * * * *

(j) Angles, shapes, and sections: Prod-

[2] The applicable rates of duty are omitted as they depend upon the date the merchandise was entered. The reduced rates are predicated upon T.D. 68-9.

ucts which do not conform completely to the respective specifications set forth herein for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products.

* * * * * * *

Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not drilled, punched, or otherwise advanced; sheet piling of iron or steel:

Angles, shapes, and sections:

Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:

* * * * * * * *

Drilled, punched, or otherwise advanced:

609.84 Other than alloy iron or steel---------- * * *

609.86 Alloy iron or steel----- * * *

The Record

The record consists of an oral stipulation of the parties; the testimony of two witnesses for plaintiff and one witness for defendant;[3] various exhibits submitted by both parties; and the official papers.

The pertinent facts are these:

The subject merchandise comprises conveyor belts and belting imported in coils. By oral stipulation, the parties have agreed that the "merchandise is *either* 'steel' or 'alloy iron or steel' as those terms are defined in schedule 6, part 2, subpart B, headnote 2(g) and headnote 2(h)" (emphasis added) (R.4). The specifications of the merchandise and processing performed by the manufacturer in Sweden, Sandvik AB, varied considerably from shipment to shipment, as the following facts will demonstrate:

Type or grade of steel: Carbon or stainless steel.

Width: From 8 to 154 inches.

Length: Up to 600 feet.

Thickness: From .016 to .080 inch.

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[3] Plaintiff's witnesses were Mr. Arve Larsson, president of Sandvik Conveyor, Inc., and Mr. Bertil Annerhed, manager of the conveyor department of the exporter, Sandvik AB, Sweden. Defendant's witness was Mr. Edward Scott, president of Handy and Harman, Metalsmiths Division, a manufacturer of conveyor belts.

Weight: Minimum 0.42 pound per linear foot (for 8 inch width and .016 inch thickness)

The merchandise was manufactured from cold-rolled carbon or stainless steel coil stock, which was straightened to reduce or remove "side camber", flattened, slit to specified widths, and then edge finished. In some entries the belting was produced by the manufacturer by welding individual bands together longitudinally to achieve wider widths. Also, in some entries the merchandise when imported was perforated, ground to close tolerances, polished, or the ends prepared for "final jointing" (R. 24).

The "majority" of plaintiff's importations of the subject merchandise were placed in its warehouse inventory to fill customer orders. Such inventory merchandise was cut after importation to the required length from the imported coils and prepared by plaintiff in accordance with the particular customer's requirements. Thus, in certain instances plaintiff added rubber to the bottom side of a belt "for the purpose of tracking it in a grooved terminal pulley on the conveyer" (R. 103), welded fixtures or accessories to a belt (such as side retainer strips), polished a belt to give it a high reflective finish, slit a belt to a special width, and joined several belts together to form longer special lengths.

The importations were used as belts or belting for conveyor systems in a wide range of industries that require mechanical handling, such as the food technology and chemical industies. In a majority of cases, plaintiff shipped belts to its customers which were open ended and made endless at the place of installation.

Contention of the Parties

Plaintiff contends that the merchandise is a "material" since "it is actually 'commercially capable' of other uses [other than belt conveyors] and is not 'ready for use' as imported". It is further urged that "[t]he protested merchandise, as imported, is a basic shape or form of steel, sheet, which does not conform completely to the TSUS specifications for 'sheet'; therefore, the merchandise is classifiable under Item 609.84 or 609.86, TSUS, as 'Angles, shapes, and sections . . . [D]rilled, punched or otherwise advanced: . . .' ". And finally, plaintiff argues that classification under item 609.84 or 609.86, TSUS, is more specific than classification under item 657.20.

Defendant contends "that the subject importations—specially manufactured and sold as conveyor belting—is a finished article of commerce, not commercially capable of other uses, and not any 'material' as embraced by plaintiff's claims". Accordingly, defendant insists that such finished or completed article of commerce is excluded from the purview of items 609.84 and 609.86.

OPINION

1.

From the positions of the parties, it is apparent that central to the determination of whether the importations are properly dutiable as angles, shapes, and sections is the issue of whether they are a "material".

Pistorino & Company, Inc. v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972), is a case in point. There, metal stampings or blanks made from strip, dedicated to use in the manufacture of latch needles (knitting machine needles), which required substantial additional processing, were held properly dutiable as angles, shapes, and sections under item 609.88 rather than as unfinished latch needles under item 670.58. Pertinent to the provisions for angles, shapes, and sections are the following comments by Judge Ford, writing for the Second Division (69 Cust. Ct. at 53–54):

> * * * According to the Tariff Classification Study, Schedule 6, page 89, subpart B sets forth an orderly systematic arrangement which would apply to iron and steel, their alloys, and their basic shapes and forms in addition to iron and steel waste and scrap. It therefore logically follows that the provision for angles, shapes and sections includes a more advanced product than item 609.13 [strip] * * * *but is still a material. Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F. Supp. 14 (1969). It is to be noted that the superior heading to item 609.88 includes the language "whether or not drilled, punched, or otherwise advanced." This is a clear indication that an advancement even to the point of dedication was intended to be included therein *so long as the article still remains material. Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party in Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970) [*aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F. 2d 1048 (1972)]. [Emphasis added.]
>
> We have no difficulty in finding that the imported blanks are shapes which do not conform to the specifications set forth in headnote 3, schedule 6, part 2, subpart B. We further find that said blanks are dedicated to use as latch needle blanks but are not unfinished latch needles. * * *

In *John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974), certain side rails dedicated for, and solely used as, parts of railroad hopper cars were held properly dutiable as "parts" of railroad or railway cars under item 690.15, rather than as "angles, shapes, and sections" under item 609.80. Judge Maletz rejected the plaintiff's argument that the rails were materials requiring substantial further processing, finding instead that "in their imported condition, the in-

volved rails were virtually ready for use only as a part of the railroad stock described in item 690.15 requiring as they did merely insubstantial further processing" (72 Cust. Ct. at 25). Significantly, the court also commented (72 Cust. Ct. at 27–29):

> It may well be that most angles, shapes and sections are *ultimately* dedicated and used as parts of articles and that such *ultimate* use determines the form in which the angles, shapes and sections are made. See *United States* v. *The Singer Manufacturing Company*, 37 CCPA 104, 106, 107, C.A.D. 427 (1950). But this scarcely means that all angles, shapes and sections are parts *per se*. Thus, if in its imported condition, an angle, shape or section has been processed or advanced in manufacture *only* to a point where substantial additional processing is necessary before it can be used as a part of a given article, the import would not be classifiable as a "part," but rather would be considered a material and thus (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections. See e.g., *United States* v. *The Singer Manufacturing Company*, *supra*, 37 CCPA 104; *Associated Metals & Minerals Corp.* v. *United States*, *supra*, 65 Cust. Ct. 586.
>
> * * * * * * *
>
> Moreover, even though many angles, shapes and sections may be advanced to the point where they are dedicated to use as parts, they still would be classifiable under the provisions for angles, shapes and sections if no specific provision for the part exists. For example, in *Commercial Shearing & Stamping Company* v. *United States*, *supra*, it was held that hemispherical shapes or heads—which were chiefly used as end closures on pressure containers designed and used for the transport and storage of compressed gases—were properly classified by the government as angles, shapes and sections under item 609.80—the same item that is involved here—rather than as articles of iron or steel, not specially provided for, under item 657.20, as claimed by plaintiff. While the record showed that the imported merchandise was a part of a metal pressure container designed and used for the transport and storage of compressed gases, item 640.10, which covers such containers, does not provide for parts. [Footnote reference omitted.] For that reason, classification of the imported shapes as a part under item 640.10 was precluded and the articles were held properly classified as angles, shapes and sections under item 609.80—which item, the court held, was relatively more specific for the hemispherical shapes, in the condition imported, than item 657.20, the general provision for articles of iron or steel, not specially provided for.

In *Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party-in-Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972), the Government's classification of certain hemispherical shapes or tank heads for pressure tanks as

angles, shapes, and sections was upheld as against plaintiff's claim under item 657.20. Respecting the matter of "finished" articles dedicated to a particular use, Judge Landis, writing for the Third Division, stated (65 Cust. Ct. at 104):

> We read TSUS to concede that the term "angles, shapes, and sections" may apply to articles finished in the sense that their shape and size dedicate them to a particular use or, minimally, dictate what they can be used for and, therefore, to classify them by the degree to which they have been advanced toward any use. Unless such a literal interpretation is placed upon the relevant classifying terms, the distinction between angles, shapes, and sections "not drilled, not punched, and not otherwise advanced", in TSUS item 609.80 and angles, shapes, and sections "drilled, punched, or otherwise advanced", in TSUS item 609.84, is meaningless. * * *

The articles in the following two cases were held to be excluded from the provisions for angles, shapes, and sections since they were finished, ready to use articles of commerce, rather than materials requiring further processing: *Trans-Atlantic Company* v. *United States*, 70 Cust. Ct. 243, C.D. 4459 (1973) (iron shelf brackets); and *Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F. Supp. 14 (1969) (wading pool walls). Thus, in *Trans-Atlantic* the court observed (70 Cust. Ct. at 248):

> Defendant contends that while the rolled tee, from which the shelf bracket is made, is a basic shape or form, the importation is a completely fabricated article upon which no further work is required to fit it for its specific use and therefore is an article of commerce and no longer a basic shape or form. *Stengel* v. *United States*, 2 Ct. Cust. Appls. 137, T.D. 31663 (1911).
>
> It is noted that the superior heading to item 609.84, *supra*, contains the language "whether or not drilled, punched, or otherwise advanced." This is a clear indication of an intent to include an advancement even to the point of dedication so long as the article remains material. *Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party-in-Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067 (1972).
>
> The imported merchandise is without dispute a finished article known in the trade as a shelf bracket. It has therefore passed the state of being material and is in fact a separate and distinct article of commerce. Such an article is not within the purview of item 609.84, *supra*.

Finally, in my very recent decision, *Sandvik Steel, Inc.* v. *United States*, 75 Cust. Ct. 68, C.D. 4609 (1975), shoe die knife steel, a product made from strip (and not conforming completely to the specifi-

cations thereof in headnote 3(h), schedule 6, part 2, subpart B), but nevertheless a material dedicated to use in the manufacture of clicker dies, was held to be more specifically provided for as angles, shapes, and sections under item 609.84 or item 609.88, depending upon the weight per linear foot, than as articles of iron or steel, not more specifically provided for elsewhere in the tariff schedules, under item 657.20.

I am clear from the above cited decisions that so long as merchandise re nains a "material", dedication to a particular use does not foreclose its classification as angles, shapes, and sections. With this principle in mind, we now turn to a discussion of the record.

2.

The record discloses that the merchandise varied in several significant respects. In a "majority" (R. 73) of the entries, belting was placed in plaintiff's warehouse inventory, cut to the required lengths, and further processed according to the needs of the ultimate users. However, in other entries the merchandise was manufactured by the exporter "to specification" (R. 54) for specific users. Thus, the invoices show that some conveyor belts were predestined for specific customers in the rubber and baking industries.[4] Hence, the latter merchandise did not constitute a mere "material".

Additionally, the testimony of plaintiff's witness Annerhed shows that in some shipments the manufacturer prepared the ends of the belts for "final jointing" (R. 24). Joint preparation by the exporter is also evident from many of the invoices.[5] In those instances where the manufacturer prepared the ends for final jointing, the only further preparation required to make an endless conveyor belt was joining the prepared ends together by riveting or welding.[6] Such joinder of the ends is not the "substantial further processing or manufacturing" required to constitute the merchandise a "material". Apposite here is the following comment by Judge Maletz in *Carr* (72 Cust. Ct. at 26):

> * * * Indeed, in the circumstances of a case such as this, in order to constitute a mere material, substantial further processing or manufacturing would be necessary after importation before the merchandise became a completed product or a completed part of a product. * * *

[4] For example, see the invoices covered by protests 66/15301 (National Biscuit Co.), 66/15302 (Sunshine Biscuit Co.), 66/30262 (U.S. Rubber Co.), 66/32073 (National Biscuit Co.), 66/44228 (Murry Biscuit Co.), 66/4758 (Chicago Bakery Addition), 67/12197 (Greer Oven), 67/21553 (entry 786689) (Greer Oven).

[5] See for example the invoices covered by the following protests: 66/15301, 66/15302, 66/26272 (entry 958308), 66/32383 (entry 1019811), 66/42979, 66/44228, 66/47578, 66/48605, 66/49244 (entry 935900), 67/31309, 67/70699, 67/71503, 68/19334, 68/32512.

[6] It would be unreasonable to assume that where the ends were prepared by the manufacturer for final jointing, the merchandise was cut after importation to shorter lengths and the ends again prepared for final jointing by the importer.

In sum, only the "inventory" or stock belting, which was not precut or marked in any way to indicate the ultimate length of a belt, and which required joint preparation *after* importation, in my view, is a "material". Such inventory merchandise was not dedicated to the making of any particular conveyor belts, and therefore the identity of the individual belts was not fixed with certainty. *Cf. United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933); *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938); *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161 (1971); *Sandvik Steel, Inc.* v. *United States*, 75 Cust. Ct. 68, C.D. 4609 (1975). Unfortunately for plaintiff, the testimony of its witnesses was general in nature and not directed to any specific entries. Therefore, the record fails to identify those "majority" entries comprising the inventory merchandise.

3.

A further failure of proof relates to plaintiff's burden under items 609.84 and 609.86 of establishing that the merchandise was "cold formed".[7] Although the record shows that the *coil stock* (strip or sheet material) used to manufacture the belting was cold rolled, Annerhed's testimony and the invoices[8] indicate that some of the *belting* (which is claimed to be angles, shapes, and sections) was produced by a longitudinal welding process (R. 24, 34). However, that welding process was not shown to be a cold-forming operation. And I do not regard longitudinal welding as merely an "advancement". Fundamentally, the process by which a shape was created cannot at the same time constitute an "advancement". *Commercial Shearing, supra*, 65 Cust. Ct. at 105.

Finally, under items 609.84 and 609.86 it was plaintiff's burden to identify those shipments of belting which were "Other than alloy iron or steel" (item 609.84) and those which were "Alloy iron or steel" (item 609.86), the two grades of iron or steel angles, shapes, and sections being dutiable at different rates.

The record establishes that the shipments were either carbon steel or stainless steel. Although plaintiff submitted no evidence to that effect, the court may take judicial notice of the fact that "carbon steel" is a nonalloy steel, while stainless steel is an alloy steel. Further, the parties have orally stipulated that the "merchandise is *either* 'steel' or 'alloy iron or steel' as those terms are defined in schedule 6, part 2, subpart B, headnote 2(g) and headnote 2(h)" (emphasis

[7] Plaintiff does not assert that the merchandise was produced by hot rolling.

[8] See for example the invoices covered by the following protests: 66/15301, 66/30262, 66/32073, 67/12197, 67/21553 (entry 786689), 68/41223, 68/54532, 69/10772, 69/17262.

added) (R. 4). Unfortunately for plaintiff, again, neither this stipulation nor the testimony of its witnesses identifies the band steel in any particular shipment as one type of steel or the other. Moreover, many of the invoices do not describe the type of steel (carbon or stainless steel) in the shipment.[9] Consequently, respecting those entries wherein the type or grade of steel was not identified, the court has no way of determining whether the shipment was other than alloy steel (item 609.84) [10] or alloy steel (item 609.86), which fact as noted above, was part of plaintiff's burden of proof in each entry.

In view of plaintiff's failure of proof respecting the matters discussed herein, the protests are overruled. Judgment will be entered accordingly.

(C.D. 4611)

BAYLIS BROTHERS CO., ETC. *v.* UNITED STATES

American goods returned

Merchandise entered by a customhouse broker where no owner's declaration or superseding bond has been filed, and the protest filed by the importer and actual owner is duly ratified, *held* the court has jurisdiction to determine the matter. *United States* v. *Wedemann & Godknecht, Inc., a/c Atwater Throwing Co., et al.*, 62 CCPA 86, C.A.D. 1151, 515 F. 2d 1145 (1975).

The appraisements admittedly being erroneous, the liquidations are void. The protests are, therefore, premature, and, accordingly, are dismissed.

Court Nos. 67/28752, etc.

Port of Cleveland

[Dismissed.]

(Decided September 25, 1975)

Sharretts, Paley, Carter & Blauvelt (*Patrick D. Gill* of counsel) for the plaintiffs.
Rex E. Lee, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

FORD, Judge: Pursuant to rule 8.2 of the rules of the court, plaintiffs have moved for summary judgment. Defendant has filed opposition thereto on the ground the court lacks jurisdiction since the parties instituting the action are not included in section 514 of the Tariff Act of 1930 as being entitled to file.

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[9] For example see the invoices covered by the following protests: 66/15301, 66/30202, 66/32073, 66/47573, 66/49244 (entry 935900), 67/12197, 68/3122, 68/4315.

[10] Also, the court has no way of determining whether the "additional duties" provided for in headnote 4, schedule 6, part 2, subpart B are applicable.

There is no issue as to the merits of these cases which have previously been determined in *United States* v. *Baylis Brothers Co.*, 59 CCPA 9, C.A.D. 1026, 451 F. 2d 643 (1971). Defendant has conceded in its answer that the fabric components of the dress fronts are entitled to the allowance prescribed by item 807.00, TSUS. Accordingly, the duty on the imported merchandise should be based upon the full value less the cost or value of the United States components.

The sole issue presented is the question of jurisdiction of the court to determine this matter based upon the alleged lack of authority of the plaintiffs to file protests pursuant to the provisions of section 514 of the Tariff Act of 1930 which reads as follows:

SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.

Except as provided in subdivision (b) of section 516 of this Act (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation. [19 U.S.C.A. § 1514.]

The essential facts relating to the factual situation involved in the cases before the court are set forth in the affidavit of Eileen Guenther, the owner of M. A. Graser-Rothe, the customhouse broker making the entries, which is attached as exhibit 1 to the motion for summary judgment. The affidavit reads as follows:

EILEEN GUENTHER being duly sworn deposes and says:

1. I am the owner and licensed customhouse broker of M. A. Graser-Rothe.

2. I have been affiliated with M. A. Graser-Rothe in that capacity since 1957.

3. During the period 1965 through 1973, M. A. Graser-Rothe, a licensed customhouse broker, has made numerous entries for the account of Baylis Brothers Inc., also known as Baylis Brothers Company.

4. In most, if not all, of these entries, M. A. Graser-Rothe appears as importer of record and nominal consignee of the imported merchandise in which entry was made on behalf of Baylis Brothers Inc.

5. In all these transactions, the merchandise was ultimately consigned to Baylis Brothers Inc.

6. I am familiar with the circumstances surrounding the entries.

7. In instances where no superceding [sic] bond or owner's declaration was filed in connection with the entries, M. A. Graser-Rothe paid the duties and, in turn, was reimbursed for the payment for the duties by Baylis Brothers Inc.

8. We acknowledge that Baylis Brothers Inc. is the real party-in-interest and ultimate consignee in a commercial sense in all instances where we have acted as customs broker for Baylis Brothers Inc., irrespective of whether an owner's declaration or superceding [sic] bond was filed.

9. In all instances mentioned in paragraph 7 above, Baylis Brothers Inc. has acted as agent for M. A. Graser-Rothe in filing protests pursuant to Section 514 of the Tariff Act of 1930, as amended.

10. M. A. Graser-Rothe has ratified the actions of Baylis Brothers Inc. in filing protests in connection with these entries.

11. At all times, M. A. Graser-Rothe and Baylis Brothers Inc. have been in agreement as to the filing of protests by Baylis Brothers Inc.

12. Upon refund of any duties resulting from a successful prosecution of this action, M. A. Graser-Rothe would in turn forward said refunds to Baylis Brothers Inc.

In addition, the following summary of facts agreed upon by the parties in their respective complaint, answer, reply, and memorandum were set forth in defendant's opposition to the motion for summary judgment:

1. The merchandise, consisting of smocked dress fronts, is the same in all material respects as that in *United States* v. *Baylis Brothers Co.*, 59 CCPA 9, C.A.D. 1026, 451 F. 2d 643 (1971), as modified, which was therein held dutiable under item 807.00, TSUS, upon the full value of the imported article less the cost or value of the American component of such article (complaint, para. 11, 20; answer, para. 11, 20).

2. The importations, consisting of fabric pieces, the product of the United States, and thread, not a product of the United States, were appraised together as an entirety, without a separate value having been returned for the fabric pieces (answer, para. 26; reply, para. 26).

3. In the absence of the finding of separate values for the fabric pieces, there were no valid appraisements (answer, para. 27; reply, para. 27).

4. If the protests were legally filed, they are premature as the liquidations are invalid in the absence of valid appraisements (answer, para. 28; reply, para. 28).

5. The various protests in this consolidated action were filed by the Baylis Brothers Co., Baylis Brothers, Inc., and Baylis Brothers Co., Inc. (complaint, preamble).

6. M. A. Graser-Rothe made entry (memorandum in support of plaintiff's motion for summary judgment, p. 1).

7. M. A. Graser-Rothe is shown in the carrier's certificates filed in connection with the entries herein as the owner or consignee for the purposes of section 484(h) of the Tariff Act of 1930, 19 U.S.C. 1484(h) (answer, para. 21; reply, para. 21).

8. M. A. Graser–Rothe is the importer of record, as well as the owner and consignee of the instant merchandise, pursuant to section 483 of the Tariff Act of 1930, 19 U.S.C. 1483 (answer, para. 22; reply, para. 22).

9. No owner's declaration or superseding bond has been filed pursuant to section 485(d) of the Tariff Act of 1930, 19 U.S.C. 1485(d) (answer, para. 23; memorandum, *supra* at 1).

Based upon the foregoing and the principles set forth in *United States* v. *Wedemann & Godknecht, Inc., a/c Atwater Throwing Co., et al.*, 62 CCPA 86, C.A.D. 1151, 515 F. 2d 1145 (1975), and for the reasons set forth below, the court finds the cases to be properly before it. In view of the fact that the appraisements herein are void, the liquidations are premature and, accordingly, void. It naturally follows that the cases have been prematurely filed and are dismissed.

Judge Rich, in *Wedemann & Godknecht, supra*, made the following observations:

> * * * The only question that remains is whether there was clear error in the lower court's conclusion that appellee, in filing the protest, *acted as* the agent of the consignee. While there is no evidence of specific appointment of Wedemann & Godknecht, Inc., to act as agent of Allen Forwarding Co. in filing protests, it would have been a work of supererogation to have made such an appointment in view of the relationship of these customs brokers to each other and to the business of Farbenfabriken Bayer and its domestic customers. Those relationships were such as to reduce to an absurdity the strange statement in the Government's brief that "Wedemann & Godknecht, Inc. was a stranger to the entry transaction * * *." On the contrary, the facts

demonstrate that Wedemann & Godknecht, Inc., was in the driver's seat throughout, selecting out-port brokers to represent it and its client, employing lawyers to file protests as necessary, and generally looking after the customs business of FFB. Allen Forwarding Co. did not have to appoint it to file protests as its agent because Wedemann & Godknecht, Inc., was making the decisions, and when it filed the protests on the Philadelphia importations it must have done so as the agent of "the person paying such charge." Although it did so without specific request or appointment, we think the "ratification" by Allen Forwarding Co. cleared up that question, both confirming the agency relationship *within the meaning of section 514* and adopting the action taken as its own.

We do not regard this as a technical question of agency law in the usual sense. Agency law as such is primarily concerned with contractual rights and liabilities, vicarious tort liabilities, etc.; what we are really concerned with here is customs law procedures, court pleadings, and the proper naming of parties in compliance with a procedural statute. The right at stake is the right to a judicial review, on which hangs the right to recover excess duty admittedly paid. In *Wilmington Shipping Co.* v. *United States*, 52 CCPA 76, 79, C.A.D. 861 (1965), we expressed approval of the proposition stated in *Lewis' Sutherland on Statutory Construction*, Sec. 717, that statutes giving the right of appeal are to be liberally construed in furtherance of justice. In *Eaton Mfg. Co.* v. *United States*, 60 CCPA 23, C.A.D. 1076, 469 F. 2d 1098 (1972), in which the sufficiency of a protest filed pursuant to section 514 was involved, we said, 60 CCPA at 30, that "denial of jurisdiction for insufficiency of protest is a severe action which should be taken only sparingly" and construed the protest liberally. In spite of some uncertainty, we held it sufficient because it did not "impose any undue burden on the collector." In *Wells, Fargo & Co.* v. *United States*, 7 Ct. Cust. Appls. 346, T.D. 36903 (1916), the predecessor of this court took a liberal view of the establishment of an agency relationship in the matter of filing a protest by Wells, Fargo as a customhouse broker for an owner. The court said (p. 351–52):

> This is not a case which involves the binding force and effect of a contract made by an agent, but rather is a question of practice or procedure under a statute providing how an action may be instituted.

In light of these principles and precedents and on the particular facts of this case we find no error in the decision below. The record makes it clear that the Government was aware at all times that any refunds of excess duty paid were to go to Allen Forwarding Co., and thus did not suffer additional administrative burden from the manner in which these protests were filed.

I also note in the concurring opinion by Judge Miller the following, which is applicable to the case at bar:

> The courts have consistently permitted the owner-importer of the merchandise or his agent to protest the decision of the

collector, even though such owner-importer or agent (or both) was not so identified in the entry papers, upon proof of identity at the trial. See *United States* v. *Hannevig*, 10 Ct. Cust. App. 124, T.D. 38384 (1920); *Adolco Trading Co.* v. *United States*, 71 Cust. Ct. 145, C.D. 4487 (1973); *Great Lakes Foundry Sand Co.* v. *United States*, 15 Cust. Ct. 256, Abs. 50442 (1945); *Bernstein* v. *United States*, 59 Treas. Dec. 870, T.D. 44800 (Cust. Ct. 1931); *Davies, Turner & Co.* v. *United States*, 58 Treas. Dec. 1216, Abs. 14407 (Cust. Ct. 1930); *Gray* v. *Lawrence*, 10 F. Cas. 1031 (No. 5,722) (C.C.S.D.N.Y. 1853). The import of these decisions is that, for purposes of section 514, a protest may be filed by one who proves that he is the real party in interest or his agent. Thus, in *Bernstein*, supra, the concurring opinion quoted the following portion of Chief Justice Taney's opinion in *Mason* v. *Kane*, 16 F. Cas. 1044 (No. 9,241) (C.C.D. Md. 1851):

> We see no inconvenience that can arise to the collector, or the public, by permitting the owner to maintain the suit in his own name, instead of suing in the name of his agent or consignee; the payment by the consignee, is the payment by the principal; and the protest of the consignee, the protest of the principal, if he thinks proper to adopt it. We think the practice in some of the circuits has sanctioned suits by the foreign owner, in cases of this description; and as this practice is consistent with a fair construction of the act of 1845, and no injustice or inconvenience can arise from it, the court are of the opinion, that this objection must be overruled.

By the same token Baylis Brothers Co., etc., in the instant case, are the actual importers who, in fact, hired and directed the entry of the merchandise through their broker, M. A. Graser-Rothe. The affidavit of the broker in the instant case ratifies the action of filing the protests as in the *Wedemann* case, *supra*. The government was and is aware of this fact and would not suffer any administrative burden.

In view of the foregoing, I find the cases to be properly before the court and find they have been filed prematurely and are hereby dismissed for appropriate administrative action not inconsistent with this decision.

Plaintiffs' motion for summary judgment is, therefore, granted. Judgment will be entered accordingly.

(C.D. 4612)

SUMITOMO SHOJI CHICAGO, INC. *v.* UNITED STATES

Steel ellipsoid shapes

The merchandise, in the condition imported, consists of ellipsoid shapes undisputedly made by cutting a sheet of steel plate in a cold condition to a circular shape. The circular shape is placed in a

press whence it is pressed into an ellipsoid shape. For transportation purposes, lifting angles are welded to the shape. After importation the shapes are inspected for defects and rust; the lifting angles are removed; the contour of the shape is checked and, if necessary, correctively "bumped", and the edge of the shape is prepared for welding to a tank cylinder that is actually used as the tank of a railroad car for transporting liquids or gases in bulk. Witnesses testified that to their general knowledge ellipsoid shapes of the kind imported are used as tank ends on cylindrical steel tank storage pressure vessels which have general use other than for tank cars.

Defendant classified the ellipsoid shapes as articles of iron or steel, not specially provided for, dutiable under TSUS item 657.20. Alternatively, defendant claims that these ellipsoid shapes are parts of railroad rolling stock dutiable under TSUS item 690.35.

Plaintiff contends that the ellipsoid shapes should be classified under the TSUS item 609.80 provision "angles, shapes, and sections".

Defendant's burden of proof with respect to its alternative claim, to establish that ellipsoid shapes of the class or kind imported are solely or chiefly used as parts of railroad cars, did not shift to plaintiff. Defendant introduced no proof.

Held. Plaintiff's claim that the ellipsoid shapes should be classified as a shape, cold formed, and not otherwise advanced, dutiable under TSUS item 609.80, is sustained. *Commercial Shearing & Stamping Company* v. *United States*, 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972), cited and discussed.

Court Nos. 70/44233, etc.

Port of Chicago

[Judgment for plaintiff.]

(Decided September 30, 1975)

Barnes, Richardson and Colburn **(*James H. Lundquist* and *Peter J. Fitch* of counsel); *Glenn A. McTavish*, co-counsel, for the plaintiff.**

***Rex E. Lee*, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), or the defendant.**

LANDIS, Judge: This action covers five protests consolidated for trial at Chicago. The merchandise on trial, so to speak, consists of steel plate, pressed to an ellipsoid shape, imported from Japan. Plaintiff in its complaint [1] alleges that the ellipsoid shapes, in the condition imported, were not properly classified under the Tariff Schedules of the United States (TSUS).

[1] At trial, in open court, plaintiff moved, without objection, to amend the complaint. The motion was granted and an amended complaint filed.

Customs officials at Chicago classified the ellipsoid shapes under TSUS item 657.20 which, in pertinent part, is as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

Part 3. – Metal Products

Subpart G. – Metal Products Not Specially Provided For

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

Articles of iron or steel, not coated or plated with precious metal:

* * * * * * *

Other articles:

* * * * * * *

657.20	Other	19% ad val.

Plaintiff claims that the ellipsoid shapes are properly classifiable under TSUS item 609.80 or, in the alternative, under TSUS item 609.13. Both of those items appear in schedule 6, part 2 of the tariff schedules where they are provided for, in pertinent context, as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

Part 2. – Metals, Their Alloys, and Their Basic Shapes and Forms

Part 2 headnotes:

1. This part covers precious metals and base metals * * * their alloys, and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. * * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

* * * * * * *

Subpart B. – Iron or Steel

Subpart B headnotes:

* * * * * * *

3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

* * * * * * *

(g) Plates and sheets: Plates are flat rolled products whether or not corrugated or crimped, in coils or cut to length, 0.1875 inch or more in thickness and, if not cold rolled, over 8 inches in width, or, if cold rolled, over 12 inches in width. Sheets are flat rolled products whether or not corrugated or crimped, in coils or cut to length, under 0.1875 inch in thickness and over 12 inches in width. For the purposes of this subpart—

(i) the term "black plate" refers to cold rolled steel sheets, not coated, under 0.0142 inch in thickness;

(ii) the term "tin plate and tin coated sheets" refers to tin coated steel sheets; and

(iii) the term "terne plate and terne coated sheets" refers to steel sheets coated with terne metal (a lead-tin alloy).

* * * * * * *

(j) Angles, shapes, and sections: Products which do not conform completely to the respective specifications set forth herein for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products.

* * * * * * *

Plates, sheets, and strip, all the foregoing, of iron or steel, cut, pressed, or stamped to nonrectangular shape (except as provided in item 609.17):

	Other than alloy iron or steel:	
	* * * * * * *	
609.13	Valued over 8 cents per pound	9.5% ad val.
	* * * * * * *	
	Angles, shapes, and sections, all the foregoing of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not drilled, punched, or otherwise advanced; sheet piling of iron or steel:	
	Angles, shapes, and sections:	
	Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:	
	Not drilled, not punched, and not otherwise advanced:	
609.80	Other than alloy iron or steel	0.1¢ per lb.

Defendant, responding to the complaint, denies plaintiff's claims and for an affirmative defense alleges that if not properly classifiable under TSUS item 657.20, as assessed, then the ellipsoid shapes are properly classifiable as parts of railroad stock under TSUS item 690.35, which provides as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 6. – Transportation Equipment

Subpart A. – Rail Locomotives and Rolling Stock

* * * * * * *		
	Railroad and railway rolling stock:	
690.15	Passenger, baggage, mail, freight and other cars, not self-propelled	* * *
	* * * * * * *	
	Parts of the foregoing articles:	
	* * * * * * *	
	Other:	
690.35	Parts of cars provided for in item 690.15 * * *	18% ad val.

At the trial, six witnesses testified for plaintiff. Plaintiff also put in evidence ten exhibits, principally photographs and drawings, relevant to the processing of the shapes before and after importation. Defendant introduced no evidence.

In the condition imported, the ellipsoid shapes are undisputedly made by cutting a sheet of steel plate in a cold condition to a circular shape. The circular shape is then placed in a press whence it is pressed into an ellipsoid shape. For transportation purposes, lifting angles are welded to the shape. After importation the shapes are inspected for defects and rust; the lifting angles are removed; the contour of the shape is checked and, if necessary, correctively "bumped". The testimony also establishes that the edge of the shape must be prepared for assembly to a tank cylinder. The edging, which is done on a shape-burning machine, is an exacting process and the type of edge (which may require removing up to five inches of metal) put on the shape must meet critical industry standards for welding the shape to a tank shell or cylinder.

Weighing the above facts, particularly those bearing on the process by which the shape was produced, its condition as imported and the use of the shape as a tank end, I am unable to discern any material difference between these ellipsoid shapes and the hemispherical steel shapes classified in *Commercial Shearing & Stamping Company* v. *United States*, 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F.2d 1048 (1972). Plaintiff *inter alia* cites and relies on *Commercial Shearing* to authorize classification of the ellipsoid shapes under the TSUS superior heading "Angles, shapes, and sections". I conclude that there is little, if any, substance to defendant's opposition in this case to a classification (i.e., angles, shapes, and sections) which it supported in *Commercial Shearing*.

In *Commercial Shearing*, defendant took the position that customs officials at Laredo had correctly classified hemispherical shapes,[2] used as tank ends on pressure containers, under the TSUS heading angles, shapes, and sections. *Commercial Shearing* claimed that hemispherical shapes used as tank ends should be classified as articles of iron or steel, not specially provided for. This court and the court of appeals, upon review of the extensive record, held that *Commercial Shearing* had failed to overcome the presumption of correctness attaching to the classification of the hemispherical shapes under the heading angles, shapes, and sections. The precise holding in that case, it may well be, is legally decisive of nothing in this case. However, the court of appeals, incident to the holding in *Commercial Shearing*, made two observations which strike me as significant with respect to the weight of the evidence in this case and plaintiff's dual burden herein: first, to overcome the presumption of correctness attaching to the classification of

[2] The ellipsoid shapes in this case were classified by customs officials at Chicago.

the ellipsoid shapes as articles of iron or steel, not specially provided for, and second, to establish that its claim under TSUS item 609.80 as angles, shapes, and sections is correct.[3] The court of appeals first observed and found that the hemispherical product in *Commercial Shearing* was a "cold formed shape". Upon that finding the court of appeals next observed and concluded that the language of item 609.80 is unambiguous in its own coverage of the hemispherical product. Accordingly, based on the preponderance of evidence of record in this case, I find that the manner in which these ellipsoid shapes were produced is not materially different from the manner in which the hemispherical shapes in *Commercial Shearing* were produced. I conclude that these ellipsoid products are cold formed shapes and that the language "angles, shapes, and sections" of item 609.80 unambiguously covers them.

Plaintiff having overcome the presumption that the ellipsoid shapes are articles of iron or steel not specially provided for by establishing that they are specially provided for under item 609.80, it follows that the only remaining bar to classification under item 609.80 is defendant's affirmative defense claiming that they are properly classifiable as "parts" of railroad stock under item 690.35.[4] No presumption of correctness attaches to defendant's claim under 690.35. *United States* v. *R. J. Saunders & Co., Inc.*, 42 CCPA 128, 130, C.A.D. 584 (1955). Defendant vigorously contends that the preponderance of the evidence establishes that these ellipsoid shapes are "parts" of railroad stock. I am not so persuaded.

As a matter of law, and as defendant cites, "parts" of articles are excluded from schedule 6, part 2 (under which plaintiff's claimed classifications appear). Classification item 609.80 (angles, shapes, and sections) being under schedule 6, part 2, does not, therefore, include parts of articles.[5] *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4341 (1972), *aff'd*, 60 CCPA 137, C.A.D. 1098, 477 F. 2d 579 (1973). Relevant to the classification of "parts" of an article TSUS provides in a series of General Headnotes and Rules of Interpretation that for the purposes of the schedules:

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[3] Plaintiff's alternative claim beyond the simple urging in a single paragraph, that the ellipsoid shapes fall within the literal language of item 690.13 provision for plates of iron or steel, cut, pressed, or stamped to nonrectangular shape, valued over 8 cents per pound, is not seriously pressed and does not merit serious consideration. The term "plates" has a meaning assigned by Congress and plaintiff has made no attempt to relate the proofs to the meaning. *Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, 53, C.D. 4373, 350 F. Supp. 1392 (1972). A seemingly broad descriptive tariff term is not to be taken as encompassing every article which may literally come within that term but rather only those articles of the type intended by Congress in enacting TSUS. *United States* v. *General Electric Co.*, 58 CCPA 152, 156, C.A.D. 1021, 441 F.2d 1186 (1971).

[4] An affirmative defense, properly established, will tactically defeat a plaintiff's claim even though the customs classification is erroneous. *United States* v. *R. J. Saunders & Co., Inc.*, 42 CCPA 128, 130, C.A.D. 584 (1955).

[5] Schedule 6, part 2, headnote 1(iv), *supra*.

10. General Interpretative Rules. * * *

* * * * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

The testimony establishes, as alleged in the complaint, that these ellipsoid shapes were "used as tank ends in the manufacture of cylindrical steel tanks for tank cars in the United States." It is not disputed that a tank car, in common parlance, is a railroad car (i.e., rolling stock) for transporting liquids or gases in bulk.[6] *Cf. F. W. Myers & Co., Inc.* v. *United States*, 57 CCPA 87, C.A.D. 982, 425 F.2d 781 (1970). There is also no question that the ellipsoid shapes in this case were, as defendant puts it, of a size and shape "specially ordered, designed, and constructed" of a grade steel that conformed with ASTM (American Society for Testing Materials) and AAR (American Association of Railroads) specifications applicable to the production of pressure containers including those for tank cars. Defendant, having introduced no proof whatsoever, argues that plaintiff's evidence preponderantly establishes that these ellipsoid shapes were solely used as parts of tanks for railroad stock. Witnesses, however, testified that to their general knowledge, ellipsoid shapes of the kind imported are used "in many other industries" other than railroad production; as tank ends for "stationary storage tanks, above ground * * * [and] below ground"; that ellipsoid shapes "could be used for the enclosure of any type of a shell or body"; and that AAR specifications do not imply a dedication to use tanks for tank cars, but other pressure vessels as well.

Defendant further contends that notwithstanding the testimony that these ellipsoid shapes have uses other than on tanks for tank cars, the burden shifted to plaintiff to establish that ellipsoid shapes belong to a class of articles having a variety of uses, or a chief use other than as parts of railroad tank cars. The evidence, in my opinion, does not probatively establish that these ellipsoid shapes are solely or chiefly used as parts of railroad stock. For the alternative classification, therefore, defendant's burden of proof to establish sole or chief use of ellipsoid shapes as parts of railroad stock remained on defendant and did not shift to plaintiff. *Packard Instrument Co. et al.* v. *United States*, 60 CCPA 66, 68, C.A.D. 1082, 471 F. 2d 636 (1973).

There is no gainsaying that these ellipsoid shapes were in fact actually used as tank ends on containers for tank cars. The evidence

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[6] *Webster's Third New International Dictionary* (1968).

and plaintiff's admission of that fact, however, goes no further than to establish how the ellipsoid shapes were actually used. Classification as "parts of railroad stock", under rule 10(ij) requires proof that ellipsoid shapes are solely or chiefly used as such. Evidence of actual use does not establish sole or chief use. *United States* v. *John V. Carr & Son, Inc.*, 61 CCPA 41, 45, C.A.D. 1116, 495 F.2d 771 (1974). To comply with the sole or chief use test applicable under rule 10(ij) there must be "evidence regarding use on *a national basis* of * * * [ellipsoid shapes] of the class or kind imported." [Emphasis quoted.] *United States* v. *J. M. Altieri*, 61 CCPA 82, 86, C.A.D. 1127, 500 F.2d 1165 (1974). Defendant does not purport to find any such evidence in this record and I find none.

There is also no evidence which supports defendant's additional point that "even if the imported articles are first considered to be parts of tanks, which tanks are parts of railroad tank cars, they are still dutiable under item 690.35, TSUS [parts of railroad stock], as a part of a part is dutiable, in the absence of a provision for the intermediate part * * * as part of the whole [citations omitted]." [7] The intermediate part referred to by defendant is, of course, the cylinder to which the ellipsoid shape is assembled. There is first of all no showing, and who is to say that a cylinder without ends is part of railroad stock or that there is or is not a specific provision in TSUS for pressure tanks or containers [8] as would exclude classification of the tank or container as a part. To sustain that point, defendant is required to demonstrate that cylindrical tanks (produced in this case for tank cars) as a class or kind are solely or chiefly used as parts of tank cars. *United States* v. *J. M. Altieri*, *supra*. There is no such evidence, either as to the ellipsoid shapes, or the cylinders to which they are assembled. To the contrary, there is testimony that these ellipsoid shapes are used as tank ends on tanks or containers other than for tank cars. The weight of that testimony is assuredly not great. But defendant has not rebutted such testimony and unrebutted testimony is entitled to some weight. *Cf. J. M. Altieri*, *supra*. As easily as the ellipsoid shapes in this case could be called parts of railroad stock, they could just as easily be called parts of tanks with utility other than as tank cars. On this record, therefore, following the reasoning in *Commercial Shearing*, *supra*, I conclude that, as plaintiff claims, the imported ellipsoid shapes are properly classifiable under TSUS item 609.80. All other claims are overruled.

Judgment, under TSUS item 609.80, will enter for plaintiff.

[7] Defendant's brief, page 18.
[8] See, TSUS item 640.10.

(C.D. 4613)

REMBRANDT ELECTRONICS, INC. *v.* UNITED STATES

Electrical equipment

Certain television antenna switches classified as electrical switches under item 685.90, Tariff Schedules of the United States, *held* to be properly dutiable as parts of television reception apparatus under item 685.20, Tariff Schedules of the United States, as claimed.

The imported switches are not the type intended to be encompassed by item 685.90, *supra*, since they are not used in power applications. *General Electric Company* v. *United States*, 63 Cust. Ct. 140, C.D. 3887 (1969), *aff'd*, 58 CCPA 152, C.A.D. 1021, 441 F.2d 1186 (1971).

Inasmuch as the imported articles are not switches within the scope of item 685.90, *supra*, they are consequently not governed by General Interpretative Rule 10(ij) of the tariff schedules.

Court No. 67/83657

Port of New York

[Judgment for plaintiff.]

(Decided October 16, 1975)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

FORD, Judge: This case involves the proper classification of certain articles described on the commercial invoices as "Television Antenna Switch unwired with Nut" which were classified as electrical switches under the provision of item 685.90, Tariff Schedules of the United States, and assessed with duty at the rate of 17.5 per centum ad valorem. Plaintiff contends the merchandise, a patented device for use in a television antenna, is properly subject to classification as parts of television reception apparatus under item 685.20, Tariff Schedules of the United States, and as such subject to duty at 10 per centum ad valorem.

Defendant concedes in its brief that the imported merchandise is used exclusively in television antennas but contends the provision for electrical switches more definitely describes the article and therefore must prevail over a "parts" provision by virtue of General Interpretative Rule 10(ij) of the Tariff Schedules of the United States. Plaintiff on the other hand takes the position that the law is well settled that the articles set forth in item 685.90, *supra*, cover only

articles used for electrical power sources and not those utilized in audio or television circuits. *Midland International Corporation* v. *United States*, 62 Cust. Ct. 164, C.D. 3715, 295 F. Supp. 1101 (1969); *General Electric Company* v. *United States*, 63 Cust. Ct. 140, C.D. 3887 (1969), *aff'd*, 58 CCPA 152, C.A.D. 1021, 441 F. 2d 1186 (1971).

The pertinent statutory provisions read as follows:

Item 685.90, TSUS:

Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof	17.5%	ad val.

Item 685.20, TSUS:

Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:		
* * * * * * *		
Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:		
Television apparatus, and parts thereof	10%	ad val.

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

The record presented on behalf of plaintiff consists of the testimony of three witnesses and the introduction into evidence of 10 exhibits. Defendant offered the testimony of one witness and one exhibit was received on its behalf.

The first witness called on behalf of plaintiff was Mr. William T. Korn, president of Rembrandt Electronics, Inc. and All Channel Products. Rembrandt was the purchaser of the raw material and manufactured the antenna which was sold by All Channel Products until approximately two years ago. At present, All Channel Products does the purchasing and selling. The witness was familiar with the imported antenna switches and testified that prior to importing them and at present the switches were manufactured and purchased from Centralab in the United States.

The switches, according to witness Korn, whether imported or made by Centralab were manufactured pursuant to the patent of Marvin P. Middlemark who was paid royalties. There is only one type of antenna switch involved although some were imported with wires and others without.

Mr. Marvin P. Middlemark, inventor of the antenna of which the switch is an integral part, is presently chairman of the board of All Channel Products. The witness identified exhibit 1 as the switching arrangement of the antenna. The switching arrangement is utilized to combine different combinations for the antenna to enable it to eliminate ghosts or bring in television signals from different directions. The witness testified that the transcript of the examination before trial which was received in evidence as plaintiff's exhibit 7 is accurate.

On cross-examination, Mr. Middlemark testified he was not an engineer but has an engineering background. He admitted the imported article is a switch but would not agree that it was an electrical switch. According to the witness, the switch merely connects different elements of the antenna. The wires connected to the switch carry high frequency induced voltages which are picked up by the antenna. After having examined exhibit 2, the witness was of the opinion that it appeared to be the same as plaintiff's exhibit 1. Mr. Middlemark testified that in his opinion an electrical switch is one in which power is carried. The switch, in his opinion, is not an electrical switch notwithstanding the reference in his patent to the terms "electrical connection," "electrically connected" and "electrically connecting." The term "electric" according to witness Middlemark is a very broad term.

Next called on behalf of plaintiff was Mr. William L. Fowler, vice president of marketing for Centralab Electronics, the American manufacturer of the switch used in the Rembrandt antenna. Mr. Fowler has a B.A. in physics, master of business administration and a master of science and engineering with an electronics major. Prior to his association with Centralab, which is among the top three manufacturers of switches in the United States, he was employed by Texas Instrument, Inc. for 11 years in various positions including

manager of applications engineering and manager of the radio-TV design group. His duties during his employment included among other things application of switches.

Plaintiff's collective exhibit 8 is the design submitted by All Channel for the manufacture of a switch. Centralab has been making and supplying this switch to All Channel since 1958. A sample of the switch manufactured by Centralab pursuant to the specifications contained in plaintiff's collective exhibit 8, was received in evidence as plaintiff's exhibit 9. On *voir dire*, Mr. Fowler stated that the switch, plaintiff's exhibit 9, is covered by a patent held by Mr. Middlemark. According to Mr. Fowler, exhibit 9 is not a general purpose switch but is a custom-made switch designed primarily for interconnections of audio- and radio-frequency components.

Upon being shown exhibit 4, a single gang rotary switch manufactured by Mallory, Mr. Fowler testified that exhibit 4 is a general purpose switch and could not be substituted by All Channel in the manufacture of its antennas. Based upon his experience the witness testified that rotary switches have in excess of 15,000 uses but the involved switch, in his opinion, would not be applicable to any such uses. In the switch industry, the terms "shorting" and "non-shorting" have a particular meaning. A shorting switch is one in which a second contact is made before breaking the first engaged contact. A non-shorting switch is one in which the first engaged contact is broken before the second contact is made. Shorting in an electrical sense as opposed to an electronic sense differs. In the former it means you have grounded the power and it would endanger the person operating the equipment or the equipment itself. In an electronic sense, shorting means interconnecting. Shorting switches are used in audio and RF (radio-frequency) applications in order to avoid sudden disruptions in the circuit whereas non-shorting switches are used in power circuits such as electric lights and motors. In addition to the shorting feature of the switch, the witness stated that the detent action, which relates to how rapidly the connections are made and broken, the material of the stator, and the contact materials make the involved switch unsuitable for power applications.

According to witness Fowler, the detent action in power application requires the rapid making and breaking of contact in order to avoid arcing at the contact point.

On cross-examination, Mr. Fowler testified he endorses the standards of the American Institute of Electrical Engineers and therefore agrees that a switch is a device for making, breaking, or changing the connections in an electric circuit. However, according to Mr. Fowler, a switch is a broad term. Exhibit 9 is composed of standard stock items carried by Centralab but manufactured to All Channel's specifications. The witness then admitted that dipoles of the antenna intercept electromagnetic radiation which induces a voltage and current.

Mr. Fowler stated, in answer to questions by the court, that a low-power switch is one associated with RF (radio-frequency) and audio circuits as opposed to lighting, power and motor applications. Exhibit 1 is a low-power switch.

Defendant called Mr. Lee Stuart, an electrical engineer with the United States Army Corps of Engineers, on its behalf. Mr. Stuart is a licensed professional electrical engineer having 16 years experience with the Corps of Engineers. The witness stated he signed an affidavit submitted for use in opposition to a motion for summary judgment and that the answers are true and correct. Counsel for defendant then offered said affidavit as defendant's exhibit B. Exhibit 1, according to witness Stuart, is a several position selection switch having a very small power rating. Exhibit 1 is not an electronic switch since it has no tubes, transistors or non-linear parameters. It is an electrical switch since it is used to connect components of the antenna for the strongest possible signal. This, in his opinion, is an electrical function.

The issue thus presented to the court is whether the imported patented switches, which are admittedly used exclusively in a television antenna produced by plaintiff, are electrical switches within the intendment of item 685.90, Tariff Schedules of the United States. If so, the term "electrical switches" being a specific provision would prevail over a "parts" provision as prescribed by rule 10(ij), *supra*. If, on the other hand, the articles enumerated in item 685.90, Tariff Schedules of the United States, relate only to articles used in power circuits, plaintiff must prevail as it has met the dual burden of establishing the classification to be incorrect and its contended classification to be correct.

The scope of item 685.90, Tariff Schedules of the United States, has previously been construed by this court and the Court of Customs and Patent Appeals. *Midland International Corporation* v. *United States*, 62 Cust. Ct. 164, C.D. 3715, 295 F. Supp. 1101 (1969); *General Electric Company* v. *United States*, 63 Cust. Ct. 140, C.D. 3887 (1969), *aff'd*, 58 CCPA 152, C.A.D. 1021, 441 F. 2d 1186 (1971). These cases held the articles enumerated and described in item 685.90, *supra*, all relate to electrical power circuits. The Court of Customs and Patent Appeals in C.A.D. 1021 made the following observation:

> Appellant argues that, since item 685.90 contains no express words limiting the application of the enumerated devices to "power" electrical circuits as distinguished from "audio" circuits, it was error for the court below to so construe the statute. In aid of this contention, appellant relies on dictionary definitions and certain encyclopedic, scientific and technological commentaries as well as the 1955 *Brussels Nomenclature* and explanatory notes relating thereto.
>
> After a consideration of the language of item 685.90, the background materials cited in aid of construction of that item, and the arguments of counsel, we are not persuaded of reversible error in

the decision of the Customs Court. We cannot agree with appellant's argument that rule 10(ij) requires that the provision of item 685.90 for "other electrical apparatus for making or breaking electrical circuits" must prevail over the provision for parts of radio reception apparatus in item 685.22. This is because we think the Customs Court was correct in its holding that the imported jacks, used in low current audio circuits, are not specifically provided for in item 685.90 since the items enumerated therein all relate to electrical power circuits.

I am not unmindful that the jacks involved in these cases were classified under the provision for "other electrical apparatus for making or breaking electrical circuits * * * " and not the provision for "electrical switches" as is the classification herein. However, the entire item (685.90) has been held to relate to electrical power applications.

The switches herein have been established by competent testimony to be utilized in the antenna portion which picks up the transmitted television signal. Such application is not a power circuit and hence the involved switch is not the type intended to be covered by said item 685.90, *supra*. Along this line, the court in C.A.D. 1021 made the following observation:

> We also think it pertinent to observe here that a seemingly broad descriptive tariff term is not to be taken as encompassing every article which may literally come within that term but rather only those articles of the type intended by Congress in enacting the TSUS. *United States* v. *Andrew Fisher Cycle Co.*, 57 CCPA 102, C.A.D. 986 (1970). The jacks in the present case are not, in our opinion, the type of article Congress intended to encompass by item 685.90.

Inasmuch as said articles are not switches within the scope of item 685.90, *supra*, they are consequently not governed by rule 10(ij), *supra*.

In view of the foregoing the claim of plaintiff under item 685.20, Tariff Schedules of the United States, *supra*, is sustained.

Judgment will be entered accordingly.

(C.D. 4614)

MEGO CORP. *v.* UNITED STATES

Vinyl baseball and boxing gloves

Merchandise invoiced as (1) a "Vinyl sponge leather glove" and (2) a "Vinyl leather boxing glove" was classified under item 737.90 as other toys, not specially provided for. Held: (1) The imported "sponge leather glove" is similar in all material respects to the

junior edition baseball gloves in the incorporated case of *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969), and as such is properly classifiable as a baseball glove under item 734.54. (2) The imported "boxing glove" is a junior edition boxing glove and is therefore properly classifiable under item 735.05 as a boxing glove.

"JUNIOR EDITION" SPORTS GLOVES NOT TOYS

Under the tariff schedules, imported "junior edition" baseball and boxing gloves that are smaller, cheaper and less elaborate than larger, more expensive models are not regarded as toys, but are classifiable under the same provision as the more expensive articles, if the cheaper items perform the same function on a smaller scale.

Court No. 72-1-00172

Port of New York

[Judgment for plaintiff.]

(Decided October 23, 1975)

Tompkins & Davidson (*Allerton deC. Tompkins* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

MALETZ, Judge: This action involves the question as to the proper tariff classification of merchandise imported from Taiwan in 1971 which was described on the invoice as (1) a "Vinyl sponge[1] leather glove" (hereafter referred to as "the baseball glove or gloves") and (2) a "Vinyl leather boxing glove" (hereafter referred to as "the boxing glove or gloves"). The merchandise was classified by the government under item 737.90 of the tariff schedules as other toys, not specially provided for, and assessed with duty at the modified rate of 21 percent ad valorem.[2]

Plaintiff contends that "the baseball gloves" are properly classifiable under item 734.54 as baseball gloves dutiable at the modified rate of 15 percent. Alternatively, it claims that the gloves are classifiable under item 735.05 as "other gloves * * * specially designed for use in sports," dutiable at the modified rate of 9 percent or under item 735.20 as game, sport, athletic or playground equipment, dutiable at the modified rate of 12 percent.

With respect to the imported "boxing gloves" plaintiff claims alternatively that they are properly classifiable under item 735.05 as boxing gloves dutiable at the modified rate of 9 percent or under item 735.20.

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[1] On the invoice the word "sponge" was erroneously spelled "spenge."

[2] The assessed and claimed rates are rates that were modified by T.D. 68-9.

The following are the relevant provisions of the tariff schedules:

Classified under:

Subpart E [Schedule 7, Part 5]. – Models; Dolls, Toys, Tricks, Party Favors

Subpart E headnotes:

1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules, * * *—

* * * * * * *

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

* * * * * * *

Toys, and parts of toys, not specially provided for:

* * * * * * *

737.90 Other ..... 21% ad val.

Claimed under:

Subpart D [Schedule 7, Part 5]. – Games and Sporting Goods

Subpart D headnotes:

1. This subpart covers equipment designed for indoor or outdoor games, sports, gymnastics, or athletics, but does not cover—

* * * * * * *

(v) other wearing apparel, other than specially designed protective articles such as, but not limited to, gloves, * * *

* * * * * * *

Baseball equipment, and parts thereof:

734.54 Baseball and softball gloves and mitts .. 15% ad val.[3]

* * * * * * *

[3] Pursuant to T.D. 68-9, Pres. Proc. 3822, 32 F.R. 19002, effective January 1, 1968, item 734.55 of the tariff schedules covering "Baseball equipment, and parts thereof" was deleted as a specific item but its language was retained as the superior heading preceding a new item 734.54 covering "Baseball and softball gloves and mitts."

735.05	Boxing gloves, and other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports	9% ad val.
	* * * * * * *	
735.20	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for	12% ad val.

The Baseball Gloves

Incorporated in the present case was the record in *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969), *appeal dismissed* 56 CCPA 133 (1969). In that case, articles invoiced as vinyl junior baseball gloves which were suitable for use by children below the age of eight in a baseball game were classified by the government as toys under the provisions of item 737.90. The court held, however, that, as claimed by plaintiff, the gloves were properly classifiable as baseball equipment under item 734.55 (the predecessor provision to item 734.54). As the basis for its holding, the court concluded that the importations were "junior edition" baseball gloves and that such gloves, while smaller, cheaper and less elaborate than larger, more expensive models were not regarded as toys, but rather were classifiable under the same provisions as the more expensive articles, i.e., item 734.55, since the cheaper items performed the same function on a smaller scale.

Against this background, the parties agree that the single issue on this phase of the case is whether or not the baseball gloves here in question are similar in all material respects to the baseball gloves involved in the incorporated *New York Merchandise* case.

Considering first the incorporated case, we note that the gloves therein are made of vinyl and are similar in appearance to the baseball gloves used by professionals. In the present case, the baseball gloves are likewise made of vinyl and are also similar in appearance to the baseball gloves used by professionals. It is to be added, however, that the gloves herein are slightly smaller but better constructed than the gloves in the incorporated case.[4]

Beyond that, examination of the sample glove in the present case and the sample glove in the incorporated case, coupled with the

[4] This latter conclusion is based on an examination of the sample and the preponderance of the evidence

evidence in the record, discloses the following additional comparative characteristics of the two gloves:

The baseball glove in the present case	The baseball glove in the incorporated case
Double stitching on the webbing between the thumb and first finger.	Single stitching on the webbing between the thumb and first finger.
Double strand woven nylon lacing between the fingers and at the base of the inside pocket which appears equal to or stronger than the rawhide lacing of the glove in the incorporated case.	Single strand rawhide lacing between the fingers and at the base of the inside pocket.
Back hand cross strap permanently attached by nylon lacing.	Back hand cross strap permanently attached by metal button.
Good pocket formation.	Poor pocket formation.
Formed polyurethane padding permanently affixed.[5]	Textile padding which can be moved around.
Light polyurethane padding in the thumb and little finger.	Heavier cotton padding in thumb and little finger.
Retail price between $1.00 and $1.49.	Retail price 98 cents.

Further, examination of the samples demonstrates that the overall workmanship of the glove herein is of better quality than the glove in the incorporated case. For example, the binding of the glove here involved is made of nylon material which is neatly stitched around the bottom seams, whereas the binding of the glove in the incorporated case—which is made of vinyl—is stitched in an obviously poorer manner; the webbing on the glove in the present case is of superior design, quality and workmanship as contrasted with the webbing on the glove in the incorporated case; while the glove in the incorporated case has an extra welted seam on the thumb and little finger, in general the welted seams of the glove herein appear to be neater and of better quality; the olive colored vinyl used for the outer facing of the glove in the present case is of considerably heavier gauge than the black colored vinyl used for the glove in the incorporated case. Finally, the court has compared the performance of the two gloves by catching a baseball a number of times with each of them and has concluded that while both are perfectly adequate for catching the

[5] Of interest is the fact that neither defendant's exhibit A in the incorporated case nor defendant's exhibit C in the present case—which are illustrative of a vinyl and a leather baseball glove used in Little League competition—has any padding in the pocket.

ball, the glove in the present case is, particularly for children, more comfortable and easier to use than the one in the incorporated case.

From what has been said, it is apparent that the glove here in question is similar in all material respects, if not better, than the glove in the incorporated case. For that reason, it is held that the gloves presently under consideration come within the purview of item 734.54 as "Baseball * * * gloves * * *." And since the gloves are thus specially provided for under item 734.54, they are classifiable under that item rather than under item 735.05 or item 735.20, as alternatively claimed by plaintiff. See e.g. *New York Merchandise Co.* v. *United States*, *supra*, 62 Cust. Ct. at 44.

The Boxing Gloves

Boxing gloves were not involved in the incorporated *New York Merchandise* case, hence the court's determination on this aspect must be based on consideration of the present record, including a sample of the boxing glove in issue. Examination of that sample shows that the glove is fully padded throughout with cotton felt which is covered with a cotton lining; has a formed thumb which is protected and padded, and a hard rubber bar sewn into the palm of the hand inside the glove to protect the fingers; contains an outer face made of soft black vinyl which is double stitched all around (save for single stitching at the bottom edge); comes equipped with soft cotton lacing; weighs about 4½ to 5 ounces; and appears to be well constructed.

Plaintiff's two witnesses [6] testified that the gloves were designed for children in the three to seven year age group; that they were sold in sets of two at a retail price of $1.00 to $1.49; and that as in the case of any boxing glove, the imported gloves protect a child's hands and also protect his opponent to some degree. Further, Mr. Kublan, the first of plaintiff's witnesses, testified that he had seen the glove used innumerable times in streets, playgrounds, backyards and schoolyards along the East Coast by boys from about four through seven years old as "boxing gloves, as sporting equipment to box, to punch a bag or * * * punch another kid" in a boxing match. (R. 31) The witness added that the imported glove here in issue, while different in construction and size from a regulation boxing glove, did not differ in use from a regulation boxing glove.

Further, the witness testified that the gloves were held out to the trade as junior boxing gloves. In this connection, in plaintiff's "Toy Catalogue" for 1971–1972, gloves substantially the same as those here were described as "JR. BOXING GLOVES – Authentic leather like soft boxing gloves. Safe and durable." The gloves were sold to

[6] Plaintiff's witnesses were Neal Kublan, director of creative projects of plaintiff, and Martin Abrams, president of plaintiff.

major department stores and were generally displayed by them in a sporting goods section of the toy department. They were also sold to neighborhood stores which handled toys and sporting goods, among other things.

Plaintiff's second witness, Mr. Abrams, testified that he had seen the imported gloves used throughout the United States by boys in the age group three through seven "[b]oxing, hitting a bag, hitting one another, with a father present, shadow boxing." (R. 69) He further testified that the imported boxing gloves are used by children in the same way that boxing gloves are used by adults.

On the boxing glove issue, defendant likewise called two witnesses.[7] Its first witness, Mr. Mercante, was concededly well qualified in all phases of boxing (amateur, collegiate and professional) involving individuals who are 10 years old and older. He testified that in the Hempstead program, which is primarily instructional and (as noted before) involves youths ranging in age from 10 to 25, 16-ounce amateur regulation boxing gloves are used.[8] Such gloves, he stated, are sold in sets of four, with the price depending on the weight of the glove.

The witness added that the imported glove differed from the boxing glove used in the Hempstead program in the following respects: First the imported glove—which, as previously indicated, weighs between 4½ to 5 ounces—is much lighter than the 16-ounce glove used in the Hempstead program. Second, the imported glove is made of vinyl and the top part has ridges or waves, whereas the Hempstead program glove is made of kangaroo leather and is smooth all around. Third, the imported glove has a padding of cotton felt, while the padding of the regulation glove consists of foam rubber and horse or goat hair. Fourth, the imported glove is too small for boys age 10, 12, or 14 to get their hands into. Most of these characteristics of the imported glove, the witness testified, constitute "dangerous factors" which would preclude his purchasing such a glove for the Hempstead program. (R. 93)

Organized boxing for boys, Mr. Mercante continued, is a form of the sport in which there are specified written rules and competent personnel instructing, guiding and supervising the boys. The youngest

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[7] Defendant's first witness was Arthur Mercante, who is presently a sales manager at the F. & M. Schaefer Brewing Co. and is also a consultant to a youth boxing program conducted by the Town of Hempstead, L.I., which program involves youths ranging in age from 10 to 25. In addition, Mr. Mercante is a member of the New York State Athletic Commission as a referee, has for 21 years refereed professional boxing matches, including five major world heavyweight title fights, and has refereed amateur boxing for a period of 32 years. He has also coached collegiate boxing and has a master's degree in education in connection with which he wrote a thesis on boxing.

Defendant's second witness was John Defoe, a clerk with the Pennsylvania Railroad who is also supervisor of the boxing program of the Police Athletic League (P.A.L.) of New York City with which program he has been associated for some 30 years. The program consists of three divisions, with the participants being boys from 12 years of age to 20.

[8] The witness Mercante testified that in the junior olympics and Golden Gloves, a 10-ounce glove is used while professional boxers use a 6- to 8-ounce glove.

child he has seen participating in such organized boxing was 10 years of age. Children of six or seven, he said, are too young to box at that age since they are unable to assimilate all the techniques of boxing; instead they are taught various rope skipping techniques and how to hold their hands. Despite his testimony that children in this age group are too young to box, the witness later testified that he had experience teaching boys from four to seven to box with gloves and in the course of such instruction provided them with regulation gloves rather than with gloves similar to the ones here in issue. In this context, he stated that he did not consider the imported gloves to be sporting equipment or suitable for use in the serious pursuit of boxing.

On cross-examination, he conceded that he had seen children "boxing" with gloves like those here in issue—but not extensively. (R. 104–5) He further testified that in the years 1950–1952 he was associated with the Wilson Sporting Goods Co. and sold gloves designed for use by children in the two to seven age group which were similar to those here in issue.[9] In connection with the children's gloves he sold in that period, he first testified that he had never seen them used by children aged seven or less (R. 105), but then contradicted himself to say that he had in fact seen children in that age category use such gloves but not extensively in any form of competition. (R. 106) He then stated that children between the ages of four and six are not too well coordinated and that they would put such gloves on and "skylark" with them, i.e., tap and "kind of slap at one another." (R. 106–7)

Mr. Defoe, defendant's other witness, as indicated before (n. 7), supervises the New York City P.A.L. boxing program which has a minimum age of 12 for participating children. He testified that the bigger and heavier the glove the less damage it would do and that for that reason the 12 year old boys participating in the P.A.L. program use the heaviest glove utilized in the program, i.e., a 14-ounce glove, as contrasted with the glove here in issue which weighs some 4½ ounces.[10] He agreed, however, that youngsters of 12 hit harder and need more protection than youngsters who are between the ages of four and seven. Continuing, he stated that the gloves used by the P.A.L. have more padding than the imported gloves, are made of leather rather than vinyl, and were always offered for sale to the P.A.L. in sets of four. He further testified that a glove similar to the one in issue had never been purchased by the P.A.L.; that in his opinion children aged four through seven could not seriously pursue the spor

[9] The witness stated that he sold such gloves to sporting goods stores which had toy departments.
[10] According to the witness, the smallest glove used in P.A.L. competition weighs 10 ounces.

of boxing;[11] and that gloves such as the imported glove cannot be used in the serious pursuit of boxing by such children because they could get hurt using them inasmuch as such gloves have ridges on the front and side which would cause marks on youngsters hit with them.

On cross-examination, the witness stated that he had never trained children between the ages of four and seven and had never bought or sold a glove like the imported one. He also testified on cross-examination that he had seen a glove like the imported glove used about four times, but later changed his testimony to say that he had *never* seen a glove like the imported one being used. Finally, the witness testified that he had seen "youngsters *at eight years old box* but never with this [the imported] type of glove" but rather with a 10-ounce glove. (R. 124–5) [Emphasis added.] Previously, however, the witness had testified that "[y]oungsters three, four, five, six, seven, *even up to ten* still don't know enough" to engage in boxing. (R. 121) [Emphasis added.]

Turning now to the legal aspects, we start with the proposition that the mere fact that the imported gloves are smaller, cheaper and less elaborate than larger and more expensive gloves does not require that they be regarded as toys.[12] To the contrary, it is a settled principle in cases involving merchandise classified as toys, that a "junior edition" of a larger, more expensive article is classifiable under the same provision as the more expensive article, if the cheaper article performs the same function on a smaller scale. Thus in *United States* v. *Field & Co.*, 12 Ct. Cust. Appls. 543, T.D. 40738 (1925), the court considered the classification of small ninepin and tenpin sets which were used exclusively by children in the playing of a game. The sets were classified as toys under paragraph 1414 of the Tariff Act of 1922 and were claimed properly dutiable under paragraph 1402 of that act as game equipment. The court held that the sets were not toys, stating (p. 545):

> It is apparent from the description of the dimensions of the pins and balls that the articles are not mere playthings. They are of sufficient size to require that they be used in the playing of the game for which they were designed in order to afford amusement to children. These articles may be said, figuratively speaking, to be "junior editions" of like articles used by adults in the playing of the game of "tenpins" or "ninepins," rather than miniatures of such articles, so small as to be unfitted for use as ninepins or tenpins, and intended to be used and actually used only as mere playthings for the amusement of children.

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[11] With further reference to the foregoing, the witness stated that on several occasions he had seen six and seven year olds engage in competition using 10-ounce gloves but did not consider such competition to be boxing.

[12] This portion of the present opinion dealing with the applicable legal principles has been borrowed virtually *in toto* from the opinion of this court in *New York Merchandise Co.* v. *United States*, *supra*, 62 Cust. Ct. 42–44.

To similar import is *May Co.* v. *United States*, 67 Treas. Dec. 965, T.D. 47760 (1935), where this court had before it certain rackets, somewhat smaller and much lower in cost than the average racket used by adults in playing the game of tennis, but suitable for and used by children ranging in age from 8 to 14 years in playing the game of tennis. The court held that the rackets were not toys under paragraph 1513 of the Tariff Act of 1930, as classified, but rather were "junior editions," small rackets designed for small persons and therefore properly classifiable under paragraph 1502 of the act—an *eo nomine* provision for rackets used with balls. The following statement by the court bears repetition (p. 968):

> We have examined Exhibits 1 to 8. While they are not high-class expensive rackets such as are used by adults, who can afford such rackets, in playing the game of tennis, they are fairly well made, and of a reasonably substantial nature. We think they are eminently suitable for use by children in playing tennis, or hitting a ball "back and forth", as testified by Mr. Veir. * * * It is our judgment that the merchandise represented by all of these exhibits, including Exhibit 8, are "junior editions", that is, small rackets designed for small persons (*Wolf* v. *United States*, 19 C.C.P.A. 132). * * *

The decision in *May* was reaffirmed by this court in *F. W. Woolworth Co.* v. *United States*, 70 Treas. Dec. 435, T.D. 48573 (1936). "It is true [the court stated] that these rackets are cheap and cannot compare in strength, beauty of workmanship, or in length of life, with expensive tennis rackets used by professional players or adepts at the game of tennis; but there is nothing in paragraph 1502 to indicate that cheap, light rackets are excluded therefrom." *Id.* at 452.

Other cases in which inexpensive, "junior editions" of articles were held not classifiable as toys include *United States* v. *Strauss & Co.*, 13 Ct. Cust. Appls. 167, T.D. 41025 (1925) (croquet sets designed for use on a table); *United States* v. *Bernard, Judae & Co.*, 13 Ct. Cust. Appls. 306, T.D. 41230 (1925) (inexpensive musical instruments).

This "junior edition" concept has been carried over to the Tariff Schedules of the United States. Thus, Schedule 7 of the Explanatory Notes of the Tariff Commission's *Tariff Classification Study*, November 15, 1960, states (pp. 287–88):

> The classification problems connected with sports equipment and games and game equipment which may be chiefly used for the amusement of children are particularly troublesome. The product distinctions are elusive and it is not possible to completely resolve these problems in the revised schedule if, at the

same time, an arrangement which would have some economic significance is to be achieved. It is felt, however, that the proposed arrangement of this subpart would help materially to overcome some of the present difficulties. *The earlier provisions of this subpart discussed above for equipment for various games, such as baseball, croquet, and golf, are derived principally from tariff paragraph 1502, and it is intended that the equipment which would be classified thereunder would be of such character and quality as is ordinarily used in the serious pursuit of the game or sport named. Such equipment may be diminutive in size for use by children, such as a boy's baseball glove, but it would nevertheless be classified under these provisions so long as it was of a character suitable for use in organized play of these games.* All other articles which are not specially provided for elsewhere in the schedules and which are used in playing games or sports would be covered by this "basket" provision either as game, sport, gymnastic, athletic, or playground equipment not specially provided for. *Imitations of sports equipment are frequently made for small children. Such equipment is generally of very flimsy construction and is obviously not intended for, or used as, game or other equipment of the type provided for. Articles of this type are not covered by this subpart but would continue to be dutiable as toys and hence covered by the provisions for toys in subpart E of this part.*[13] [Emphasis added.]

Viewed against this background, it is concluded that the gloves in issue come within the "junior edition" concept. In the first place, while the gloves are different in construction and size from regulation gloves, examination of the sample shows that they are of a substantial nature and well made and not flimsy in construction. Thus, from its appearance, the imported glove would seem to be a junior edition of a boxing glove rather than an imitation of one.[14]

Second, the great preponderance of the credible testimony is that the imported gloves are widely used for boxing by boys in the four through seven year age group. Indeed, even defendant's witness Mercante conceded that he had seen children "boxing" with gloves like those here in issue—albeit not extensively. When it is considered that the imported gloves are widely used for boxing by children in the four through seven year old age group, it is obvious that the gloves are of a character suitable for use in the sport of boxing

[13] The *Tariff Classification Study* has "the same standing as Summaries of Tariff Information which is recognized by the courts as authoritative for the purpose of resolving questions relating to the meaning and scope of terms appearing in tariff acts and in determining the intent of Congress." *Rifkin Textiles Corp. v. United States*, 54 CCPA 138, 141, C.A.D. 925 (1967).

[14] In some cases the manner in which a company merchandises or displays goods may have some probative value in the classification of the goods. See e.g. *Davis Products, Inc. v. United States*, 59 Cust. Ct. 226, 230, C.D. 3127 (1967); *New York Merchandise Co. v. United States, supra*, 62 Cust. Ct. at 44. In the present case, however, merchandising practices are of no assistance in determining whether the gloves are toys or junior edition boxing gloves. For while the gloves are described in plaintiff's catalogue as "jr. boxing gloves," the catalogue itself is characterized on the cover as a "Toy Catalogue." Beyond that, while the gloves were ordinarily displayed by department stores in their sporting goods section, that section generally was located in the toy department.

as it is pursued by youngsters in the foregoing age group. It is quite true that the imported gloves are not suitable for use in boxing programs such as the Hempstead and P.A.L. programs. But those programs are limited to boys whose minimum age is 10 and 12, respectively, and who thus are capable of hitting far harder and need more protection than boys between the ages of four and seven.

The court is quite mindful of the testimony on direct examination of defendant's two witnesses that children ages seven and younger are too young to box. In fact, according to defendant's second witness, even children up to the age of 10 still don't know enough to engage in boxing. But the weight to be accorded this testimony is considerably impaired (1) by the testimony on cross-examination of defendant's first witness that he had actually taught boys in the four to seven year age group how to box; and (2) by the testimony of defendant's second witness on cross-examination that he had seen youngsters aged eight box—this in contrast to his testimony on direct examination that even children up to the age of 10 are too young to engage in boxing.

In view of the foregoing, it is concluded that the gloves in issue are properly classifiable under item 735.05 as "Boxing gloves." And since the gloves are thus specially provided for under item 735.05, they are classifiable under that item rather than under 735.20, as alternatively claimed by plaintiff.

Conclusions

In summary, it is held (1) that the merchandise invoiced as a "Vinyl sponge leather glove" is properly classifiable under item 734.54 as baseball gloves, dutiable at the rate of 15 percent ad valorem; and (2) that the merchandise invoiced as a "Vinyl leather boxing glove" is properly classifiable under 735.05 as boxing gloves dutiable at the rate of 9 percent ad valorem. Plaintiff's claims are therefore sustained and judgment will be entered accordingly.

(C.D. 4615)

Bowl-O-Beauty Co. *v.* United States

Buying commission—Separability

The appraised values mathematically equal the entered values. The import specialist made no notations on the invoices to indicate concurrence with the contents thereof. A supervisory appraising officer (who did not testify that he reviewed the specific appraisements in these appeals) stated that the official papers did not manifest what information was relied on in making the appraise-

ments, but it would "appear" that the invoiced buying commission was included in the appraised export values, and that the "probabilities" were that the invoices were relied on in making the appraisements. The testimony is speculative and insufficient to establish that the invoices were in fact relied on or that the appraisements in fact included the amounts specified on the invoices as buying commission.

Held. The appraisements are not viably separable in terms that the appraised export values can be analyzed and issue limited to the dutiable status of the invoiced buying commission. The presumption of correctness favoring the appraisements is not overcome. *Concord Electronics Corp.* v. *United States*, 69 Cust. Ct. 241, A.R.D. 304, 345 F. Supp. 1000 (1972), *appeal dismissed*, 60 CCPA 185 (1972), and cases cited therein.

Court Nos. R70/8993, etc.

Port of Chicago

[Judgment for defendant.]

(Decided November 4, 1975)

Schwartz & Lidstrom (*Thomas J. O'Donnell* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

LANDIS, Judge: In these appeals for reappraisement, consolidated for trial, plaintiff contends that the appraised export values[1] of merchandise exported from Hong Kong and appraised at Chicago, provenly include a non-dutiable buying commission.[2] Plaintiff, in argument, relies on the separable appraisement doctrine to narrow the issue to the question of buying commission.[3] If the appraisements in these consolidated cases are not separable, and as a result there is insufficient proof for the court to find that the appraised export values include a specified amount as a commission considered dutiable, then the question of buying commission is not viably framed in terms that the appraised export values can be analyzed and issue limited to that question.[4] *Concord Electronics Corp.* v. *United States*, 69 Cust. Ct. 241, A.R.D. 304, 345 F. Supp. 1000 (1972), *appeal dismissed*, 60 CCPA 185 (1972). Upon consideration of *Concord* and the cases therein cited and discussed, I conclude that plaintiff has failed to establish that the appraisements include a commission of a specified

[1] 19 USCA § 1401a.

[2] A buying commission is not part of the price at which merchandise is freely sold or offered for sale to all purchasers on statutory export value basis, *United States* v. *Nelson Head Co.*, 42 CCPA 175, C.A.D. 590 (1955).

[3] *Cf. United States* v. *Chadwick-Miller Importers, Inc., et al.*, 54 CCPA 93, C.A.D. 914 (1967).

[4] *Cf. United States* v. *Bud Berman Sportswear, Inc.*, 55 CCPA 28, C.A.D. 929 (1967).

amount that is separable from the price at which the merchandise was appraised on export value basis and accordingly must hold plaintiff has failed to overcome the presumption of correctness favoring the appraisements.

The official papers represent the only material evidence of the appraised export values. Mr. John T. Walsh, a supervisory import specialist at the times the merchandise was appraised at Chicago in 1969–1970, testified pursuant to plaintiff's subpoena.

Plaintiff, as the official papers show, entered the merchandise at the commercially invoiced total f.o.b. Hong Kong prices. The commercial invoices separately list, in United States currency, unit prices, total unit prices ex-factory, and specified amounts for items designated "agent buying commission," "inland freight," "hauling and lighterage." The prices ex-factory plus the specified item amounts for commission, freight and haulage, in sum, add up to the total price designated "F.O.B. Hong Kong."

There is no question that the merchandise in these reappraisement entries was appraised at the entered values as indicated by the examining officer's red check mark in the appropriate valuation column of the official document for use of customs officials entitled "Summary of Examination and Appraisement." On all but one of the summary reports there also appears a red stamped notation. On some of the reports the notation reads "No Change," and on others the notation reads "Appraised Liq[uidated] as Ent'd." The examining officer made no relevant red ink notations on the commercial invoices to indicate concurrence with the contents thereof.

Plaintiff, in factual argument, concedes that on the face of the official papers the appraised export values are not separable because "the appraisements were not indicated on the invoices in terms of a first cost plus the addition of charges." Plaintiff's clearly stated position here is that "the testimony of Supervisory Import Specialist Walsh indicates that the appraisements were arrived at by adopting the invoice values."

Mr. Walsh testified that the appraised export values in dispute were advisorily reported by Customs Import Specialist W. Stolpe. He stated that at the time of these appraisements Mr. Stolpe was one member of the several customs teams of import specialists under his supervision. Mr. Walsh was not asked and he did not testify that he reviewed Mr. Stolpe's appraised export values in these specific reappraisement cases. What he significantly said was that he could not testify to what was done by Mr. Stolpe in making the appraisements. It is, he stated, manifest from Mr. Stolpe's appraisal summary report (Mr. Walsh was asked by counsel to examine entry No. 108460 in reappraisement No. R70/8994 relevant to the appraised values) that

he, Mr. Stolpe, accepted the entered values. Mr. Walsh said it is also manifest from the official papers that the entered values are identical to the aggregate total of the commercial invoices. But the official papers do not, as Mr. Walsh testified they do not, manifest that the invoices were the sole basis upon which Mr. Stolpe determined the appraised export values.

Beyond what was manifest from the official papers, Mr. Walsh would go no further than to agree with plaintiff's counsel that it would "appear" that the invoiced buying commission was included in the appraised export values, and that the "probabilities" were that the invoices were relied on.

The difficulty with this testimony is that it is speculative[5] in that Mr. Walsh was unable to testify as to just what Mr. Stolpe did and what he relied on in making his appraisements. The fact that the appraised export values mathematically equal the invoiced f.o.b. Hong Kong totals is not, in the absence of any invoice notations by Mr. Stolpe, evidence that he or his superiors accepted the stated invoice unit ex-factory prices and charges in determining the statutory export prices of the merchandise. *Concord Electronics Corp.* v. *United States, supra; Haddad & Sons, Inc.* v. *United States,* 53 Cust. Ct. 423, R.D. 10825 (1964); *see also J. Westheimer & Co.* v. *United States,* 69 Cust. Ct. 230, R.D. 11774 (1972).

Plaintiff literally agrees with the above assessment. Off that agreement, however, plaintiff submits that "the fact that the appraised values herein are the mathematical equivalent of the invoiced prices plus charges, in combination with the corroborative testimony of Mr. Walsh, is support for the * * * [court to find] that the appraisements are constructively separable." Corroborative evidence is that which tends to strengthen and confirm other evidence. Since plaintiff agrees that the appraised export values are not, on the face of the official papers, separable, there is no evidence that Mr. Walsh can confirm. In each of the cases[6] cited by plaintiff as precedents for finding these appraisements separable, the advisory appraising official who made the appraisement testified to what he did in making the appraisement. Mr. Walsh clearly stated that he could not testify to what Mr. Stolpe did or what information Mr. Stolpe relied on in reporting his appraisements.

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[5] *Cf. United States* v. *Tide Water Oil Co.*, 19 CCPA 302, 309, T.D. 45554 (1932); *see also United States* v. *F. B. Vandegrift & Co. et al.*, 26 CCPA 360, 365, C.A.D. 42 (1939).

[6] *Bud Berman Sportswear, Inc.* v. *United States*, 55 Cust. Ct. 574, R.D. 11056 (1965), *aff'd*, 57 Cust. Ct. 733, A.R.D. 211 (1966), *aff'd*, 55 CCPA 28, C.A.D. 929 (1967); *Louis Goldey Co., Inc., et al.* v. *United States*, 61 Cust. Ct. 547, R.D. 11508 (1968), *aff'd*, 64 Cust. Ct. 868, A.R.D. 275 (1970), *appeal dismissed*, 58 CCPA 165 (1971); *Caroline Mfg. Co.* v. *United States*, 62 Cust. Ct. 850, R.D. 11640 (1969); *Haddad & Sons, Inc.* v. *United States*, 62 Cust. Ct. 896, R.D. 11656 (1969), and *United States* v. *Shalom & Co.*, 57 Cust. Ct. 767, A.R.D. 216 (1966), *appeal dismissed*, 55 CCPA 115 (1968).

I find the evidence insufficient to establish that the appraised export values include the amounts specified on the invoices as "buying commission." I conclude, as a matter of law, that the appraised export values are not separable and that the statutory export values of the merchandise in these reappraisements are the presumptively correct appraised values. These appeals for reappraisement are, accordingly, dismissed. Judgment will so enter.

(C.D. 4616)

SPANEXICO, INC. *v.* UNITED STATES

Furniture

EXPORT VALUE—SALES SUBSEQUENT TO TIME OF EXPORTATION

Sales or offers of sale subsequent to the time of exportation cannot be used to establish the correct export value of imported products.

ORDINARY COURSE OF TRADE

Since the record is devoid of evidence concerning the conditions which were normal at or prior to the time of exportation, the ordinary course of trade has not been established.

MARKET VALUE—INVOICE PRICES

If it is ever possible to determine that invoice prices to a "selected purchaser at wholesale" "fairly reflect the market value" without evidence of prices in other kinds of transactions for comparison purposes, that is so only when the relations between buyer and seller are clearly set forth and are such as to warrant an inference that they dealt at arms length.

Court No. 72-5-01089

Port of San Diego-San Ysidro

[Judgment for defendant.]

(Decided December 2, 1975)

Glad, Tuttle & White (*Edward N. Glad* and *Robert Glenn White* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Michael S. O'Rourke* and *Velta A. Melnbrencis*, trial attorneys), for the defendant.

MALETZ, Judge: This action concerns the proper dutiable value of various items of furniture either of iron, iron and wood, iron and glass, or wood and glass that were manufactured by Gavaldon, S.A. of Tijuana, Mexico and exported into this country via the port of

San Ysidro during the period from April 1970 through November 1970. The merchandise was appraised by the government on the basis of export value as defined in section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplication Act of 1956, at certain per se values. Plaintiff Spanexico, the importer of the merchandise, agrees that export value is the proper basis for appraisement but contends that the invoice prices on the entries herein involved represent the proper dutiable values of the importations in question.[1]

The Statute

Section 402 of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 U.S.C. 1401a) provides as follows:

> (b) For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.
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> * * * * * * *
>
> (f) For the purposes of this section—
>
> (1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—
>
> (A) to all purchasers at wholesale, or
>
> (B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,
>
> without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.
>
> (2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.
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> * * * * * * *

[1] Plaintiff abandoned its claims as to style no. 71 in entry 104213; as to style no. 102; as to style no. 104, except in entry 103137; and as to style no. 5004.

The Issues

Two questions are presented: First, whether or not the government appraisement is erroneous; second, if the appraisement is erroneous, whether plaintiff has proven by a preponderance of the evidence that its claimed values, i.e., the invoice prices, represent the proper dutiable values of the importations in question.

The Record

In the circumstances of the present case, the record is best understood by summarizing the relevant testimony, starting with the testimony of Morris Kantorovich, president of the importer, Spanexico, and also president of the Riviera Sofa Bed Co., both of which were located at 2875 El Cajon Boulevard, San Diego. Mr. Kantorovich testified that Spanexico was a corporation formed in 1969 to import wrought iron and wooden furniture from Mexico. It first purchased this furniture for about three months in 1969 from a Mexican manufacturer, Muebles Coloniales Mexicanos. That firm, however, went out of business in September 1969. Kantorovich thereupon looked for other suppliers in Tijuana and in Mexicali, but could not find any to supply him, though there were a number of backyard operators in Tijuana as well as two larger manufacturers there, namely, Vargas and Manufacturera Commerciale; however, these two companies were already selling to somebody else and could not supply him. Kantorovich, therefore, asked Sergio Gavaldon, a social friend and not a business associate, who had never been in the furniture business if he would set up a plant to produce furniture that was up to the standard needed for the American buying public and thus enable Spanexico to obtain such merchandise from a reliable source. Gavaldon agreed and thereupon Gavaldon, S.A.[2] of Tijuana was formed around September 1969. Mr. Kantorovich testified that he had no financial interest whatsoever in Gavaldon, S.A., did not own any of its stock and was not an officer or director. Although he sometimes went to visit the Gavaldon plant to see how his orders were doing, he did not supervise that company in any way. While Spanexico did not furnish or purchase any machinery for Gavaldon, S.A., it did furnish designs or plans for furniture as well as the glass, cartons, and packing materials for the furniture.[3]

Furniture purchased by plaintiff Spanexico from Gavaldon, S.A. was paid for by check payable to whomever Gavaldon designated; thus, on occasion, Spanexico paid for the furniture by depositing its check for the amount due in an account Gavaldon, S.A. maintained

[2] S.A. stands for "Sociedad Anonima" which means it is a corporation.

[3] Kantorovich testified that on occasion, in order to get cartons from this country into Mexico, which was illegal, he would "smear" Mexican customs officials. (R. 69).

in a San Diego bank. Money in this account was used to establish credit so that Gavaldon, S.A. could purchase materials it needed from American suppliers. Bank statements from the account were sent to Spanexico's office in San Diego.

Mr. Kantorovich would sometimes purchase supplies for Gavaldon, S.A. for which he was repaid by checks written on this account. He bought such supplies on behalf of Gavaldon, S.A. since American companies were afraid to sell to companies in Mexico for fear they would not get paid.

The checkbooks for Gavaldon, S.A.'s bank account were kept at Spanexico's office in San Diego. At Mr. Gavaldon's request, Mr. Kantorovich asked Mrs. Eileen Krake—who was Spanexico's secretary-treasurer and also secretary to Kantorovich in his capacity as president of Riviera Sofa Bed—to write and sign all checks for Gavaldon, S.A. Spanexico did not have similar arrangements with any other manufacturer and did not charge Gavaldon, S.A. for the services performed by Mrs. Krake.

Additionally, Spanexico advanced to Gavaldon, S.A. without any interest a total of $146,982.20 for the period August 1, 1969 through October 31, 1970, of which only $80,600.00 was repaid as of the latter date. The money was apparently advanced without any guarantee to Spanexico that the money would not be used to manufacture merchandise for sale to others. According to Mr. Kantorovich, Mexican manufacturers require an advance for merchandise to insure performance.[4] Kantorovich further testified that Gavaldon, S.A. needed the advances to meet payrolls and to buy materials to produce the merchandise, because it did not itself have the necessary resources.

All of Spanexico's advances were not repaid because Gavaldon, S.A. had a fire, could not collect insurance thereon, could not provide Spanexico with the merchandise, and went out of business in December 1970. Eventually Kantorovich negotated a settlement with Gavaldon with respect to the outstanding balance under which Spanexico received $8,000.00.

Spanexico purchased from Gavaldon, S.A. until December1970 and did not pay the latter more than the price reflected in the invoices. During the period from April to November 1970, such prices remained the same and were allegedly established by negotiation or by market conditions on competitive items. Spanexico paid inland freight to Gavaldon, S.A. and the merchandise was delivered by Gavaldon, S.A. directly to Spanexico's customers since the latter had no warehousing facilities. However, if a delivered item was defective, the customer looked to Spanexico to replace it.

[4] Kantorovich, however, could not remember whether he advanced any money to Muebles Coloniales Mexicanos, his earlier supplier.

Sergio Gavaldon, plaintiff's second witness, testified that prior to the formation of Gavaldon, S.A. in 1969, he had never been in the furniture business. His responsibilities as president of Gavaldon, S.A. were to name the people who were going to manage the business, that is, the chief of production, the bookkeeper-accountant, etc. During 1970, he himself had several businesses, such as "money change houses" and restaurants, and he also worked in department stores.

Although not sure, Mr. Gavaldon believed that Gavaldon, S.A.'s prices to Spanexico were arrived at by having Gavaldon's chief of production calculate costs to which was added a markup of approximately 80 percent for general expenses and profit. Plaintiff's exhibit 3 represents the prices at which the furniture was sold to Spanexico in February 1970. While Spanexico tried from time to time to lower these prices, the prices in 1970 did not vary to any significant extent.

Gavaldon, S.A. did not have any customers other than Spanexico, which was its exclusive customer. Nor during 1970 did Gavaldon, S.A. offer to sell its merchandise to any company other than Spanexico. Gavaldon, S.A. was paid sometimes in advance with the balance paid on delivery; however, it was never paid more than the prices shown on the invoices. According to Gavaldon, $146,000.00 was advanced by Spanexico to Gavaldon, S.A. of which some $80,000.00 was paid back and the balance liquidated by an arrangement between the two firms.

Gavaldon, S.A. received all packing materials and glass from Spanexico without charge and accordingly the price to Spanexico was based on the cost of only those materials that Gavaldon, S.A. actually put into the furniture.

Mr. Gavaldon testified that no one connected with plaintiff was a stockholder in Gavaldon, S.A.; that Mrs. Krake never worked as a bookkeeper for Gavaldon, S.A.; that he had problems in establishing credit in the American market and therefore asked Mr. Kantorovich to open up an account for Gavaldon, S.A. in an American bank and to pay its suppliers from that account.

Mr. Gavaldon confirmed that Gavaldon, S.A. ceased operations in December of 1970 due to a fire which occurred in April 1970. The fire started in the painting department, then went to the storage or the warehouse, and to the office, where most of the contents were burned. It was unable to collect the insurance and therefore has brought suit in court against the insurance company.

The third witness called by plaintiff was John Vincent McNally, a supervisory import specialist of the Customs Service at San Ysidro since April 1974 and prior thereto a senior import specialist at that

port since 1965. He testified that one of the lines he handled as an import specialist in 1970 consisted of wrought iron furniture. He could not recall all of the importers who were importing this type of merchandise from Mexico in 1970, though he indicated that there were probably two major and one minor importers, the major ones being Spanexico and Castilian, Incorporated (whose supplier was Herreria Vargas) and the minor one being Frank Real (which purchased from Manufacturera Commerciale).

With regard to the merchandise involved herein, Mr. McNally testified that he appraised it on the basis of "such merchandise" "on a period of time *subsequent* to the expiration of the business of Gavaldon." (R. 176) [Emphasis added.] More particularly, he stated that the last exportation from Gavaldon, S.A. to Spanexico occurred around December 3, 1970 and that on December 6 or 7, 1970, new shipments came in for Spanexico from V.I.P. de Tijuana. He believed this was the same merchandise from a different seller and in these circumstances made his appraisal of the importations here in question on the basis of V.I.P.'s prices to Spanexico for merchandise shipped on and after December 6, 1970. He added that V.I.P. did not export any merchandise between April 1970 and November 1970.

Finally, Mr. McNally conceded that he made two errors in his appraisement. Thus he admitted that style 104 in entry 103137 should have been appraised at $36.00 each and not at $52.50 each, and that style 5001 in entry 106032 should have been appraised at $4.25 and not at $5.75 each.

Defendant called as a witness Mrs. Eileen Krake who testified that she had been employed by Riviera Sofa as Mr. Kantorovich's secretary since 1957, where she did the bookkeeping, handled office details, calls, appointments, etc., and occasionally wrote checks for Riviera Sofa. Simultaneously she held the position of secretary-treasurer for Spanexico in which capacity she supervised all of the purchase orders as they came in, invoiced the customers, and did the necessary bookkeeping work.

Mrs. Krake conceded (i) that her signature appears on a bank signature card with the U.S. National Bank's El Cajon Boulevard branch, where she is listed as the bookkeeper for Gavaldon, S.A. and (ii) that she signed checks for Gavaldon, S.A. on certain specified bank accounts. These bank accounts were with the Banco Comercial Mexicano and the El Cajon Boulevard and San Ysidro branches of the U.S. National Bank. Statements of these accounts were sent to Spanexico's office where she handled them inasmuch as she was "the only one who could reconcile" them. (R. 232) She never signed a check in blank and always received her instructions from Mr. Kantorovich in writing checks on Gavaldon accounts.

The Law

It is of course basic that the values found by the government are presumptively correct and that the plaintiff has the burden of proving (1) that the appraised values are erroneous and (2) that the plaintiff's claimed values are correct.

With respect to the presumption of correctness of the appraisement, it will be recalled that Mr. McNally, the government's import specialist, testified that his appraised values were based on the selling price of merchandise that was exported at a period of time *subsequent* to the exportation of the merchandise in question. However, export value, as defined by section 402(b) of the Tariff Act of 1930, as amended—which the parties agree is the proper basis of appraisement herein—calls for a price "*at the time of exportation* to the United States of the merchandise undergoing appraisement." [Emphasis added.] Thus, the courts have consistently held that sales or offers of sales *subsequent* to the date of exportation canenot be used, as was done here to establish the dutiable value of importtd products. See e.g., *Augusta Chemical Co.* v. *United States*, 40 Cust. C . 845, 849, R.D. 9165 (1958); *B & W Wholesale Co., Inc.* v. *United States*, 63 Cust. Ct. 691, 697–8, A.R.D. 262 (1969). It therefore follows that the appraisements herein are erroneous and that the presumption of correctness attaching to them has been overcome.

In light of this consideration, the remaining question is whether plaintiff Spanexico has proven that its claimed values, i.e., the invoice prices, are the proper export values.

On this aspect, it is to be noted that the record establishes that Spanexico was the manufacturer Gavaldon, S.A.'s exclusive customer and that during 1970 Gavaldon, S.A. did not offer to sell its merchandise to anyone other than Spanexico. Hence, plaintiff Spanexico was a selected purchaser and had the burden, pursuant to section 402(f)(1)(B) of the Tariff Act of 1930, as amended, to establish (1) that the sales to it were in the ordinary course of trade and (2) that its claimed values fairly reflected the market value of the merchandise. We now consider whether plaintiff has met its burden in these two respects.

Whether plaintiff has proven that the sales of the importations in question were in the ordinary course of trade

Plaintiff's single argument that the merchandise in question was sold "in the ordinary course of trade" is based upon the assertion in its brief that the record shows that "the Mexican furniture manufacturers located in Tijuana sold to only one selected importer" and that "[t]herefore, sales by Gavaldon, S.A. only to plaintiff

herein were 'in the ordinary course of trade.' " Br. p. 18. See also reply br. pp. 1–2. But even if it be assumed that the record does in fact establish that in Tijuana, Mexico every supplier of merchandise of the same class or kind as that involved here sells for exportation to the United States only to a selected importer, it does not follow that the instant sales were made in the ordinary course of trade merely because they were made to a selected purchaser. As will be discussed later, such a conclusion on plaintiff's part completely ignores section 402(f)(2) of the Tariff Act of 1930, as amended, which defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement."

Nor can support for plaintiff's argument be found in *Chr. Bjelland & Co., Inc.* v. *United States*, 52 CCPA 38, C.A.D. 855 (1965), upon which plaintiff relies. There, competent evidence was presented to show the conditions and practices under which the exporter did business with its two United States purchasers as well as under which other Norwegian canners did their business. This evidence showed that: (a) the sales between the importer and the exporter constituted a substantial portion of the total industry sales of brisling sardines and kipper snacks and thus represented a substantial manner of doing business; (b) the appellant was the largest single importer of the items in issue; and (c) the trade conditions and provisions under which it had conducted its sales had existed for some time (52 CCPA at 45–6). It was in this context that the appellate court agreed with this court that "there may well be instances wherein there is more than one manner of doing business which would constitute the 'ordinary course of trade' " (*id.* at 45), and held "we do not find that the manner of doing business here to be outside the 'ordinary course of trade' or to require the export value to be based on actual sales or offers thereof by *others* in the industry" (*id.* at 46). [Emphasis in original.] See also *United States* v. *Lockwood & Freidin*, 61 Cust. Ct. 573, A.R.D. 241, 287 F. Supp. 283 (1968); *Mantell Export Co.* v. *United States*, 58 Cust. Ct. 662, R.D. 11290 (1967); *United States* v. *Continental Forwarding Co., Inc., et al.*, 59 CCPA 178, C.A.D. 1063, 463 F. 2d 1129 (1972).

In the present case, by contrast, there is no testimony to show that Gavaldon, S.A.'s furniture represented a substantial portion of the *Mexican* industry sales in the kind of merchandise at issue and thus represented a substantial manner of doing business. There is no testimony that Spanexico was the largest single importer of the kind of merchandise at bar. There is no testimony that Gavaldon, S.A.'s

trade conditions and practices had existed for some time. In fact, since Gavaldon, S.A. was in business only between September 1969 and December 1970, its trade conditions and practices cannot be said to have existed for *some time* prior to the exportation of the merchandise at bar. Moreover, the record reveals very little about the conditions and practices under which Gavaldon, S.A. sold its merchandise, and nothing as to whether they even remained the same during the time Gavaldon, S.A. was in business.

Inasmuch as plaintiff has failed to show the applicability of the *Bjelland* decision to this case, it was its burden to show the conditions and practices existing between it and Gavaldon, S.A., as well as those existing in the trade, so that the court could determine whether the instant sales were in the ordinary course of trade. The record, however, reflects very few facts regarding the existing conditions and practices.

Indeed, with regard to the transactions between Gavaldon, S.A. and Spanexico, the record presents merely an outline of a rather unusual relationship. Mr. Kantorovich, just having had his furniture supplier Muebles Coloniales Mexicanos go out of business and being in need of a *reliable* furniture supplier, requested Mr. Gavaldon, a social friend, who had never been in the furniture business before, to set up a furniture factory. As a result, Gavaldon, S.A. was formed in Mexico in September 1969, and the parties began transacting business. Spanexico advanced Gavaldon, S.A. $146,982.20, without any interest and apparently without any guarantee that the money would not be used to manufacture furniture for sale to others.[5] Gavaldon, S.A., in turn, manufactured the furniture and sold it exclusively to Spanexico at prices which remained constant and were allegedly established by negotiation or by market conditions on competitive items, though the record is barren of any evidence showing what merchandise was in the market and at what prices. Presumably the parties entered into some type of an agreement setting forth their mutual rights and obligations. However, it is not in evidence and its terms and conditions remain undisclosed.

In April 1970, Gavaldon, S.A. suffered a fire which destroyed a part of its facilities, thereby affecting its ability to deliver furniture. Nevertheless, Spanexico continued buying from Gavaldon, S.A. until December. As of October 31, 1970, only $80,600.00 of the $146,982.20 advance had been repaid even though, as seen from the invoices attached to the entries herein, from April through October 1970 Spanexico purchased some $118,000.00 worth of furniture against

[5] It is to be noted that Spanexico dealt with two other furniture suppliers—Muebles Coloniales Mexicanos in 1969, and V.I.P. de Tijuana subsequent to its dealings with Gavaldon, S.A. Yet, Mr. Kantorovich could not even remember whether Spanexico ever advanced any money to Muebles Coloniales. Further, there is no evidence in the record as to whether or not Spanexico ever advanced any funds to V.I.P.

which $66,382.00, the balance of the advance, could have been applied. This balance was subsequently compromised by a $8,000.00 payment.

Additionally, in April 1970, a signature card was filed with a branch of the U.S. National Bank of San Diego identifying Mrs. Krake, Spanexico's secretary-treasurer, as Gavaldon, S.A.'s bookkeeper and authorizing her to draw checks on the Gavaldon, S.A. accounts at that bank. Thereafter, in accordance with Mr. Kantorovich's instructions which were issued pursuant to Mr. Gavaldon's request, she wrote and signed at least 135 checks on those accounts totalling approximately $314,000.00. See defendant's exhibit C.[6] She also wrote checks on a third Gavaldon, S.A. account in the Banco Comercial Mexicano. All the bank statements concerning these three Gavaldon accounts were sent to Spanexico's office because Mrs. Krake was the only one who could reconcile them.

Gavaldon, S.A.'s two accounts at the U.S. National Bank were opened by Spanexico and the funds for the accounts came from Spanexico. And while ostensibly the accounts were opened for the purpose of making payments to Gavaldon, S.A.'s American suppliers who did not want to deal with Mexican companies for fear they would not get paid, only about 10 percent of Gavaldon's funds in this bank were used to pay what appears to be American suppliers. See defendant's exhibit C. At the same time, checks were written to pay off loans, loan interest, and various advances, some of which possibly represented mere transfers to other accounts. *Ibid.* Viewed thusly, it is difficult to understand why a Mexican manufacturer would want its American purchaser to be in a position to know how its funds were spent; why it would want the purchaser's secretary-treasurer to write its checks and reconcile its bank statements; why Mrs. Krake was the only one who could reconcile Gavaldon, S.A.'s bank statements; why Gavaldon, S.A. needed to open an account in the United States in April 1970 to establish its credit when it began business in the previous September; and why Spanexico and Mrs. Krake performed services for Gavaldon, S.A. without any compensation by the latter. These and many more questions remain unanswered. Further, there is no evidence whatever about the conditions and practices existing in the trade.

Against this background, it must be concluded that plaintiff has failed to prove that sales of the instant merchandise were in the

[6] Defendant's exhibit C consists of checks written from April 1970 through October 1970 on the Gavaldon, S.A. accounts at the San Ysidro and El Cajon Boulevard branches of the U.S. National Bank and signed by Mrs. Krake. Each check allegedly shows in the left-hand corner what it was written for.

ordinary course of trade since the record is devoid of evidence concerning the conditions and practices which were normal at or prior to the time of exportation. *Henry Picard, Jr.* v. *United States*, 57 Cust. Ct. 689, R.D. 11242 (1966); *Inter-Maritime Fwdg. Co., Inc.* v. *United States*, 51 Cust. Ct. 529, A.R.D. 162 (1963).[7]

Particularly pertinent to the question here is *National Carloading Corporation* v. *United States*, 57 Cust. Ct. 758, A.R.D. 215 (1966). Involved in that case was a situation where the trial court had found that plaintiff had failed to establish that the sales to the importer were in the "ordinary course of trade" because there were no evidentiary facts from which the court could make findings. The Appellate Term agreed, noting, among other things, that the importer had failed to inform the court of the normal trade practices of other importers (57 Cust. Ct. at 763–4). The same reasoning is applicable here.

Whether plaintiff has proven that its claimed values fairly reflected the market value

"One of the important changes made by the Customs Simplification Act of 1956 is found in the definition of the term 'freely sold or, in the absence of sales, offered for sale' so as to include sales or offers not only to *all* purchasers, as formerly required, but 'in the ordinary course of trade to one or more *selected* purchasers at wholesale at a price which fairly reflects the market value of the merchandise' * * *." Sturm, *op. cit., supra*, p. 76. [Emphasis in original.] Helpful in interpreting this provision is a pamphlet issued by the Bureau of Customs on December 12, 1956, entitled "Valuation—Customs Simplification Act of 1956," which states in part (p. 1):

> In the absence of sales or offers to all purchasers at wholesale resort may be had to sales confined to one or more selected purchasers at wholesale when it is the usual trade practice to adopt such methods of distribution provided that such sales are *normal arms length transactions.* * * * [8] [Emphasis added.]

To similar effect, this court has indicated that if it is ever possible to determine that invoice prices to a selected purchaser fairly reflect the market value without evidence of prices in other kinds of transactions

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[7] "Evidence of the manner in which one exporter conducts his business does not necessarily establish what is normal or usual in the trade. The practices of others engaged in the same class of trade are relevant." Sturm, *A Manual of Customs Law* (1974) p. 59.

[8] This court considered this pamphlet "of very high authority in view of its publication by the Treasury Department, which sponsored the Customs Simplification Act of 1956, the very year it was enacted." *F. B. Vandegrift & Co., Inc.* v. *United States*, 56 Cust Ct. 715, 721, R.D. 11169 (1966), *aff'd* 6 Cust. Ct. 965, A.R.D. 239 (1968), *aff'd* 56 CCPA 105, C.A.D. 962, 410 F. 2d 1259 (1969).

for comparison purposes, that is so only when the relations between buyer and seller are clearly set forth and are such as to warrant an inference that they dealt at arms length. *National Carloading Corporation* v. *United States*, 57 Cust. Ct. 758, A.R.D. 215 (1966).

With these considerations in mind, plaintiff argues in its brief (p. 17) that—

> The evidence herein shows that the transactions herein between the seller and plaintiff were at arms length and between unrelated parties. Thus, although plaintiff was the only selected wholesaler to whom the seller sold its merchandise, this fact also establishes that the prices at which this merchandise was sold, which prices remained constant during the period in question, fairly reflect market value. *J. L. Wood* v. *United States*, 62 CCPA 25, C.A.D. 1139 (1974).

This statement, however, is erroneous both as a factual and legal conclusion. For the evidence does not show that the transactions between the seller Gavaldon, S.A. and the selected purchaser Spanexico were at arms length. Indeed, as previously discussed, only an outline of the transactions between the parties has been presented with more questions left unanswered than answered. For example, the court cannot understand how the transactions can be considered to be at arms length when there is no explanation whatever of the substantial advance that Spanexico made to Gavaldon, S.A. without any interest, without any guarantee that it would not be used to manufacture merchandise for someone else, and which remained "unpaid" even though Spanexico was paying for the merchandise it received. If it was merely an advance made at the time the merchandise was ordered, the question arises as to why it was not offset against the purchase price paid by Spanexico, particularly since Spanexico received some $118,000.00 worth of furniture from Gavaldon, S.A. during the April through October 1970 period. Nor can the court understand how the transactions can be considered to be at arms length when, without compensation, an officer of Spanexico took an active part in Gavaldon, S.A.'s business by writing most, if not all, of its checks during the relevant period and reconciling Gavaldon's bank statements.

Further, this case is clearly distinguishable from *J. L. Wood* v. *United States*, 62 CCPA 25, C.A.D. 1139, 505 F.2d 1400 (1974). In *Wood* the court stated that the exporter Carter, Ltd. sold for export to the United States not only to its wholly-owned American subsidiary, Carter, Inc., but also to unrelated original equipment manufacturers [OEM's] at the same basic price and thereupon held that Carter, Ltd.'s invoice prices to Carter, Inc. fairly reflected market value. In the court's words (505 F. 2d 1406):

> We join the trial court in saying: "What better proof is there of the price fairly reflecting the market value when sales are made to other unrelated United States concerns [OEM's] at the same basic price."

In the present case, however, Gavaldon, S.A. sold only to Spanexico. What is more, neither competitive purchasers nor competitive sales have been identified; competitive merchandise has not been described; and competitive prices have not been set forth. Considering (i) that the relationship of the parties has not been fully explained; (ii) that an arms length transaction has not been shown; and (iii) that there is no probative evidence as to sales and purchases by others of such or similar merchandise, there can be no basis for concluding that Gavaldon, S.A.'s invoice prices to Spanexico fairly reflected the market value of the merchandise.

Conclusion

From the foregoing, it is evident that plaintiff has failed to prove that its claimed values, i.e., the invoice prices, represent the proper dutiable values of the importations in question. Therefore, the appraised values must be affirmed with the exceptions (1) that the correct dutiable value for style 104 in entry 103137 is $36.00 each; and (2) that the correct dutiable value for style 5001 in entry 106032 is $4.25 each.[9] Judgment will be entered accordingly.

(C.D. 4617)

INTERCONTINENTAL FIBRES, INC. *v.* UNITED STATES

Yarn

GROUPED FILAMENTS—SUBSTANTIALLY PARALLEL—NOT TWISTED

Yarn, whose filaments possess a degree of twist known as producer's twist, present in an amount of approximately 0.4 turns per inch, was properly classified as other yarns of man-made fibers under item 310.01 of the TSUS. Plaintiff's claim for classification as grouped filaments under item 309.31 is rejected inasmuch as the filaments do not meet the requirement of headnote 3(e) of schedule 3, part 1, subpart E that they be substantially parallel and not twisted.

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[9] It will be recalled that at trial the government appraising officer conceded that as to these two entries he had erred in appraising the above listed style numbers and that the correct appraised values for such styles are those set out above.

Court No. 70/41971

Port of Norfolk

[Judgment for defendant.]

(Decided December 3, 1975)

Rode & Qualey (*Ellsworth F. Qualey* and *Peter Jay Baskin* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

WATSON, Judge: This case raises the issue of whether certain imported merchandise was properly classified as yarns of man-made fibers with twist of not over 20 turns per inch pursuant to item 310.01 of the Tariff Schedules of the United States, as modified by T.D. 68–9, and assessed with duty at the rate of 20¢ per pound.[1] Plaintiff claims the proper classification should be as grouped filaments within the meaning of item 309.31 of the TSUS, as modified by T.D. 68–9, dutiable at the rate of 16.5% ad valorem.[2]

The outcome of this case depends on whether the imported merchandise consists of grouped filaments as defined in headnote 3(e) of schedule 3, part 1, subpart E of the TSUS.[3] That headnote defines grouped filaments as embracing two or more filaments grouped together with the filaments *substantially parallel and not twisted.* The headnote goes on to exclude grouped filaments which have been subjected to processes such as twisting and untwisting and which are useable as yarns.

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[1] Item 310.01 of the Tariff Schedules of the United States, as modified by T.D. 68–9:

Yarns of man-made fibers:

* * * * * * *

Other:

Wholly of continuous man-made fibers (multifilament yarns):

Singles:

With twist but not over 20 turns per inch:

Valued not over $1 per pound ..... * * *

[2] Item 309.31 of the Tariff Schedules of the United States, as modified by T.D. 68–9:

Grouped filaments and strips (in continuous form), whether known as tow, yarns, or by any other name:

Wholly of grouped filaments (except laminated filaments and plexiform filaments):

* * * * * * *

Other:

* * * * * * *

Valued over 80 cents per pound ..... * * *

[3] For the purposes of this subpart—

* * * * * * *

(e) the term "*grouped filaments and strips*" embraces two or more filaments or strips, as defined in (a), (b), (c), and (d) of this headnote, grouped together with the filaments or strips, substantially parallel and not twisted, but the term does not include grouped filaments which have been subjected to processes such as twisting and untwisting, false twisting, crimping, and curling, and which are useable as yarns;

The imported merchandise has a measurable amount of twist known as producer's twist which is imparted to the filaments in the stage of their production known as the drawing operation. The original "undrawn" yarn is produced by extruding molten polyester material through the holes in spinneret plates. The resulting individual filaments are cooled and bundled together on packages called spinning spools. At a later time the "undrawn" yarn is drawn or stretched by means of a machine called a "drawtwister". The yarn runs off one end of the spinning spool, passes between two rollers running at different speeds, which stretches it, and then goes to a winding mechanism which uses a moving ring to wind the yarn around a spindle-driven bobbin. It is the twist which is imparted in the course of winding the yarn on the bobbin which is at the core of the dispute herein.

The defendant, whose customs laboratory measured producer's twist of 0.4 turns per inch in the merchandise of entry 106405 and 0.3 turns per inch in the merchandise of entry 106359, takes the position that the filaments in this yarn cannot be considered substantially parallel and not twisted within the meaning of the aforementioned headnote 3(e). Plaintiff takes the position that producer's twist is a slight twist and it was not the intention of Congress to exclude merchandise such as this from classification as grouped filaments.

Plaintiff stresses a sentence which appears at page 50 in the Tariff Classification Study, Schedule 3, which indicates that the language of headnote 3(e) "* * * is not intended to preclude the classification under these provisions of grouped filaments with a slight twist unintentionally introduced in the process of winding such filaments on holders."

Although the language of headnote 3(e) is not so suggestive of alternative meanings as would ordinarily cause me to consider it ambiguous, I do believe an examination of legislative history is warranted, if only to explore the possibility that the legislative history reveals an intention which is not clearly expressed in the statutory headnote. On its face, the headnote in question would appear to exclude this merchandise from the ambit of grouped filaments. The filaments of this merchandise are twisted and are not substantially parallel within my understanding of that phrase. Within a length of two or three inches these filaments make one full turn about one another. They possess a measurable amount of twist, whose presence is recognizable and is generally denominated producer's twist. The departure of these filaments from the state of being parallel to one another is too pronounced to let them be considered substantially

parallel. I understand the phrase "substantially parallel" to mean virtually parallel.

The parallelism required has to be considered in accordance with the scale of the product involved. Since great lengths of yarn are involved here, the parallelism requirement should be construed in a relatively extended length. The combined effect of a requirement of parallelism and a ban on twist leads irresistibly to a view of filaments in a form which does not vary significantly from the parallel "in the long run".

Nevertheless, these considerations of plain meaning would have to be modified if the legislative history cited by plaintiff revealed an intent of the legislature to treat the filaments of yarn containing producer's twist as consisting of grouped filaments substantially parallel and not twisted. However, when examined in context, the tariff classification material relied on by plaintiff does not support so significant a modification of the statutory meaning. This is so principally because it is not at all clear that the subject of the explanatory language is yarn possessing producer's twist.

In order for a single explanatory sentence in the Tariff Classification Study to serve as a ground for including an important type of yarn in a provision where it does not fit the literal statutory definition, I would require the sentence to reveal an unmistakably clear intention. Yet, such an intention is not manifest at all. The question is not whether the instant importation can be said to have a "slight" twist or whether the twist was imparted intentionally or unintentionally. The object of our concentration or study is not to give the words "slight" or "unintentionally" the same exhaustive analysis they would receive if they were statutory language. The question herein and the focus of our attention is simply whether or not the language under discussion was clearly referring to producer's twist yarn. I think not.

The context contains no reference whatsoever to producer's twist yarn or any specific indication that the process of winding filaments on holders referred to in the explanatory sentence is the winding which comes at the end of the drawtwister production of yarn.

The distinct and more likely possibility exists that the reference is to the twist found in so-called "zero-twist" yarns. These are yarns produced by means of draw-winder machines and possess an almost infinitesimal amount of twist which can be expressed in thousandths of a turn per inch. A strong awareness of zero-twist yarn is indicated in the context of the explanatory notes. A further possibility is that the language under discussion refers in a general way to so-called

"over-end" twist which is the unavoidable twist resulting when yarn is pulled off the end of a holder or creel package. This is the origin of the infinitesimal twist present in the "zero-twist" yarn and is also imparted when yarn is repackaged from one holder to another, a not uncommon procedure. Over-end twist is far less substantial than producer's twist and can truly be said to be "slight" and "unintentional".

It is not necessary, in any event, to fix with certainty what exactly the purpose of the reference to "slight" and "unintentional" twist was, so long as it does not clearly refer to producer's twist yarn.

Since I do not detect in the explanatory notes a clear intention to treat producer's twist yarn as grouped filaments which are substantially parallel and not twisted within the meaning of headnote 3(e), I see no need to decide whether the twist in the producer's twist yarn is "unintentional". This yarn is not substantially parallel and it is twisted; therefore it cannot be considered to be grouped filaments within the meaning of item 309.31. *E. Eillingham, Inc.* v. *United States*, 70 Cust. Ct. 43, C.D. 4406 (1973).

I should note, however, that I would have great difficulty in finding a lack of intention in the introduction of a degree of twist which appears to serve a useful purpose,[4] is the result of a particular choice of machinery, is variable within certain limits and is in marked contrast to the indisputably unintentional type of twist known as over-end twist.

For the foregoing reasons, plaintiff's protest must be overruled and judgment granted for the defendant. Judgment will be entered accordingly.

(C.D. 4618)

PRESTIGELINE (DIV. OF WEIMAN CO., INC.) *v.* UNITED STATES

Opinion and Order on Cross-Motions for Summary Judgment and Defendant's Cross-Motion to Dismiss

Court No. 74-2-00364

Port of New York

[Judgment for plaintiff.]

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[4] I conclude from the evidence that the twist in producer's twist yarn serves to hold the filaments together.

(Decided December 12, 1975)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Saul Davis*, trial attorney), for the defendant.

NEWMAN, Judge: This action is before the court on cross-motions for summary judgment, and defendant's cross-motion to dismiss the action on jurisdictional grounds.

The threshold jurisdictional issue raised by defendant challenges plaintiff's standing to sue; while the merits concern the proper classification of a certain lighting device invoiced as "Multi-Lites" or as "Closet Lights", imported from Hong Kong through the port of New York in 1973.

I have concluded that plaintiff's motion for summary judgment should be granted.

JURISDICTIONAL ISSUE

The facts pertinent to defendant's motion to dismiss are:

The official entry papers disclose that the importer and consignee of the involved merchandise is "Prestigeline (Div. of Weiman Co., Inc.)". In 1973, six protests were filed covering the entries which are the subject of this civil action. As the protesting party, four of the protests named "Prestigeline, Inc.",[1] whereas the other two protests named "Prestigeline, Div. of Weiman Co., Inc.".[2] All six protests, however, identify the "protesting party" with the same importer identifying number, 36–2306554–00.

Defendant has submitted copies of documents filed in the offices of the Secretaries of State of New York and Delaware, which disclose that "Weiman Co., Inc." is a Delaware corporation while "Prestigeline, Inc." is a New York corporation.

Defendant contends that the name "Prestigeline, Inc." appearing on the four protests refers to an existing New York corporation; that inasmuch as such corporation was neither the importer nor consignee of the merchandise, it was not authorized by 19 U.S.C. § 1514 (1970) to file the protests; and that since the four protests were not filed "as prescribed" by section 1514, the court lacks jurisdiction of this civil action respecting those four protests, pursuant to 28 U.S.C. § 1582(c) (1970).

Additionally, defendant urges that the court lacks jurisdiction respecting the two protests filed in the name of "Prestigeline, Div. of Weiman Co., Inc." because the summons was filed in the name of "Prestigeline, Inc.". Thus, regarding those two protests, defendant

[1] Protest Nos. 1001-3-006785, 1001-3-012183, 1001-3-010947 and 1001-3-013812.

[2] Protest Nos. 1001-3-010041 and 1001-3-008780.

argues that the summons was not filed by a party whose protest was denied, as required by section 1582.

In opposition to defendant's motion to dismiss, plaintiff's counsel has filed an affidavit stating:

I, Charles P. Deem, being duly sworn, do depose and say:

1. That during February, 1973, I was associated with the firm of Donohue and Shaw, and negotiated with Mr. Murray L. Roth, president of Prestigeline, Div. of Weiman Co., Inc., an agreement dated 27 February, 1973 whereby Prestigeline retained Donohue and Shaw for the purpose of representing that company in Customs matters, including classification of imported lamps. A copy of that agreement is attached hereto as Exhibit 1.

2. That pursuant to the aforesaid agreement with Prestigeline, Div. of Weiman Co., Inc., your deponent caused to have prepared the six protests included in the instant civil action, and the use of the name Prestigeline, Inc. in protests 1001–3–006785, 1001–3–12113 [*sic*], 1001–3–100947 [*sic*] and 1001–3–013812 was not intended by your deponent to reflect that those protests were being filed by Donohue and Shaw on behalf of a corporation known or doing business as Prestigeline, Inc., Donohue and Shaw not representing any such corporation. Rather, the name Prestigeline, Inc. was inadvertently typed on the said protests as a shortened form of Prestigeline, Div. of Weiman Co., Inc., which acts constituted mere clerical errors by deponent's secretary.

3. That on each protest, Customs Form 19, covered by the instant civil action, the protestant's identifying importer number, 36–2306554–00, was shown in the appropriate block; that on information and belief the said importer's number was duly filed with the Regional Commissioner at New York on or about September 15, 1971; and that on information and belief the said number is assigned to and may be used solely by Prestigeline, Div. of Weiman Co., Inc. See Exhibit 2, attached hereto.

4. That on information and belief with respect to the entries covered by protests 1001–3–06785 [*sic*], 1001–3–12113 [*sic*], 1001–3–100947 [*sic*], and 1001–3–013812, the Bulletin Notice of Liquidation, Customs Form 4333 [*sic*] reflected the name of the importer of record as PRESTIGE LINE INC; and that with respect to the said entries, the Notices of Entries Liquidated, Customs Form 4333–A, similarly reflected the importer as PRESTIGE LINE INC. Copies of the pertinent CF4333–As are attached hereto as Exhibit 3.

5. That your deponent also caused to have prepared the summons in this matter showing, purely for purposes of order, the oldest protest as the lead protest, and that notwithstanding the fact that the protest has been filed in the name of Prestigeline, Inc. (but on behalf of Prestigeline, Div. of Weiman Co., Inc. as hereinabove explained), the summons was intended by your deponent to be filed on behalf of Prestigeline, Div. of Weiman Co., Inc.

In essence, then, plaintiff's position is that the name "Prestigeline, Inc." is merely a misnomer for Prestigeline (Div. of Weiman Co., Inc.), the importer of record, and therefore the protests and summons were in fact filed by a statutorily authorized party.

Under 19 U.S.C. § 1514(b) (1970), the party filing a protest must be "the importer, consignee, or any authorized agent of the person paying any charge or exaction * * *". Also, pursuant to 28 U.S.C. § 1582(c) (1970), the court lacks jurisdiction over a civil action where the protest was not filed "as prescribed by" section 1514.

Predicated upon the importer's identifying number on the protests and the affidavit of plaintiff's counsel, and upon all the facts and circumstances herein, I am persuaded that the name "Prestigeline, Inc." appearing in four of the protests and in the summons is merely a misnomer for "Prestigeline (Div. of Weiman Co., Inc.)", the importer and consignee. Hence, I find that the four protests were filed by a statutorily authorized party.

It is well settled that if a protest is filed by a statutorily authorized party, but under an inaccurate signature or a misnomer, the court is not thereby deprived of jurisdiction. *The Diamond Match Company* v. *United States*, 49 CCPA 52, C.A.D. 796 (1962); *Hancock Gross Mfg., Inc.* v. *United States*, 75 Cust. Ct. 188, C.R.D. 75–6 (1975); *Triumph Glove Co.* v. *United States*, 24 Cust. Ct. 221, C.D. 1237 (1950); *M de Orlando & Co.* v. *United States*, 38 Treas. Dec. 180, T.D. 38303 (1920).

Further, 19 *Am. Jur. 2d Corporation* § 1475 (1965) states (pages 861–862):

> § 1475. Name of corporation; misnomer.
>
> Corporations are mere legal creations and must sue and be sued in the corporate name. * * *
>
> In pleadings the corporate name must be strictly used. However, as a general rule, in suits by or against corporations, if there is a misnomer, the defect should be taken advantage of by a plea in abatement or a plea or answer in the nature of a plea in abatement. A corporation which goes to trial on the merits without objecting that it is misnamed or disclosing its true name is estopped from complaining if judgment goes against it in a wrong name. Moreover, in a proper case the courts will allow an amendment of the pleadings to change or correct the name of a corporate party. [Footnote references omitted.]

And at section 1477, it is further noted (page 862):

> § 1477. Changing or correcting mistake as to name or description.
>
> As a general rule a court will allow an amendment of the pleadings to change or correct the name of a corporate party, at least where the change does not have the effect of substituting another party (in jurisdictions not allowing a substitution of parties by amendment), and the court has jurisdiction over such

party. *The courts have allowed amendments to strike a part of the name given a corporation so as to state the true name, to add to the name given a corporation a part necessary to give the true corporate name, to change a portion of a corporate name by substituting one or more words for others erroneously used, to change the whole corporate name, and even to change the state of incorporation.* [Footnote references omitted. Emphasis added.]

Irrespective of the misnomer, the true identity of the protesting party and plaintiff in this civil action is readily ascertainable from the importer's identifying number appearing on the protests, which number corresponds to that appearing on Customs Form 5101 in the official papers. Such identifying number was furnished by plaintiff in its protests in accordance with the Customs Regulations. See 19 CFR §§ 24.5 and 174.13(a)(2). While the Government has documented the fact that there happens to exist a New York corporation by the name of "Prestigeline, Inc.", there has been no showing that in fact such New York corporation was the party on whose behalf the four protests and the summons were filed.

Moreover, it may be observed that the customs officials considered and denied all of the protests on the merits and raised no question whatsoever concerning whether the protesting party was the importer or consignee in the four protests filed in the name of "Prestigeline, Inc.". Ostensibly, then, "[t]he inaccuracy of the name used in the [four] protest[s] was not such as to fail to disclose the real party in interest or to mislead the * * * Government." *The Diamond Match Company, supra*, 49 CCPA at page 57.[3]

In short, I am clear that Prestigeline (Div. of Weiman Co., Inc.) was in point of fact the protestant in the four protests and is the actual plaintiff in the summons. The court, accordingly, has jurisdiction of this civil action.

This case, in which I find that four of the protests and the summons were filed on behalf of the importer but under a misnomer, is plainly distinguishable from the cases cited by defendant where no misonmer was involved.

Thus, in *Parksmith Corporation* v. *United States*, 73 Cust. Ct. 149, C.D. 4565 (1974), where the importer of record and the plaintiff in certain protests were ostensibly different corporations, and the plaintiff did "not come forward with even a single shred of evidence to clarify the doubts existing with regard to the jurisdiction of the court" (73 Cust. Ct. at page 149), the challenged protests were severed

[3] It is also noted that at the outset, despite the importer's name appearing on the entry papers and its identifying number, the Bureau of Customs itself used the misnomer "PRESTIGE LINE INC." in its liquidation notices. However, there is no suggestion by plaintiff that such misnomer rendered those notices ineffectual.

and dismissed. Judge Watson enunciated the applicable guidelines to be observed in situations such as the present (73 Cust. Ct. at page 150):

> In sum, my guidelines herein are as follows: If the jurisdiction of the court is challenged, as it has been here by defendant, the plaintiff must prove that jurisdiction exists. In this case it means that plaintiff must prove the existence of facts from which it can be reasonably concluded that the challenged protests were made and ultimately brought to court by the party allowed to do so under the law. *Without evidence of any sort, there is no need to discuss cases in which plaintiffs successfully rose to jurisdictional challenges.* [Cases cited. Emphasis added.]

Unlike the situation in *Parksmith*, from the importer's identifying number and from the affidavit of plaintiff's counsel, here "it can be reasonably concluded that the challenged protests were made and ultimately brought to court by the party allowed to do so under the law" (73 Cust. Ct. at page 150).

Again, unlike the present situation, in *Hersey of Canada, Ltd.* v. *United States*, 56 CCPA 64, C.A.D. 955, 406 F. 2d 1394 (1969) and *Shigoto International Corp.* v. *United States*, 66 Cust. Ct. 252, C.D. 4199 (1971), cited by defendant, there was no showing that the importers in those cases or consignees had filed the actions under a misnomer.

Finally, in my recent opinion in *Hancock Gross Mfg., Inc.* v. *United States*, 75 Cust. Ct. 188, C.R.D. 75–6 (1975), wherein defendant's motion to dismiss for lack of jurisdiction was denied notwithstanding the misnomer in the protests of the corporate plaintiff, it was stated (75 Cust. Ct. at page 192):

> While the carelessness displayed here respecting the proper naming of a corporate party in the protests is not "condoned", nevertheless I feel strongly that such technical error is properly amenable to correction. Thus, in *Wedemann & Godknecht, Inc.* Judge Rich, writing for the majority of our appellate court, very recently expressed the principle that section 514 was to be "liberally construed in furtherance of justice", and so far as pertinent here, also commented as follows (62 CCPA at 92):
>
> > We do not mean by this opinion to condone slipshod performance by the customs bar in complying with the tariff statutes. If, as the Government would have us believe, filing of protests in the name of the wrong party is becoming a problem, we hope that the excessive litigation which has resulted from what was done in this case will be taken as a lesson. But we think the penalty should fit the crime and that FFB [Farbenfabriken Bayer, A.G.] should not have to foot the bill for improving professionalism in the customs bar and among brokers.

For the foregoing reasons, defendant's motion to dismiss the action is denied.

Classification Issue

The "Multi-Lites" (or "Closet Lights") consist of battery-operated lamps or lighting fixtures designed to be attached to walls or ceilings in closets or elsewhere, and to be turned on and off by means of a pull-chain. Plastic is the component material of chief value.

The importations were assessed with duty at the rate of 8.5 per centum ad valorem under item 772.15 of the Tariff Schedules of the United States, as modified by T.D. 68-9. Plaintiff claims that the merchandise is properly dutiable at the rate of 5.5 per centum ad valorem under item 688.40, TSUS, as modified by T.D. 68-9.

The pertinent statutory provisions are:

Schedule 7, part 12, subpart C:

	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients; and household articles not specially provided for; all the foregoing of rubber or plastics:	
772.03	Salt, pepper, mustard, and ketchup dispensers, and similar dispensers	* * *
772.06	Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes, and platters	* * *
772.09	Trays	* * *
772.15	Other	8.5% ad val.

Schedule 6, part 5:

688.40	Electrical articles, and electrical parts of articles not specially provided for	5.5% ad val.

The instant case presents no genuine issue as to any material fact, and the sole dispute concerns a question of law.

Fundamentally, as the "Multi-Lites" are describable as both "electrical articles" (item 688.40) and as "household articles" (item 772.15), the appropriate classification of the merchandise is under the tariff provision which describes it "with the greatest degree of accuracy and certainty". *United States* v. *Ampex Corp.*, 59 CCPA 134, C.A.D. 1054, 460 F. 2d 1086 (1972); *United States* v. *Simon Saw & Steel Co.*, 51 CCPA 33, C.A.D. 834 (1964); General Interpretative Rule 10(c), TSUS. The foregoing principle, of course, is frequently referred to as the rule of "relative specificity".

The issue of relative specificity involving the provisions for "electrical articles" and "household articles", was raised in *L. Batlin & Son, Inc.* v. *United States*, 69 Cust. Ct. 14, C.D. 4365, 345 F. Supp. 996 (1972), *aff'd on other grounds*, 61 CCPA 17, C.A.D. 1111, 487 F. 2d 916 (1973). In *Batlin*, decorative half bird cages with flowers and lights were classified as illuminating articles under item 653.40, TSUS, and were claimed by the plaintiff to be properly dutiable under item 688.40, TSUS. Defendant admitted that the classification under item 653.40 was erroneous, and as an affirmative defense asserted that since the bird cages were chiefly used in the household, they were more specifically provided for under the TSUS provisions for household articles, depending upon the component material of chief value, than under item 688.40. Respecting the relative specificity of those competing provisions, Judge Richardson held that the TSUS provisions for household articles are not more specific than the provisions of item 688.40.

The parties have called to the court's attention a number of decisions concerning the relative specificity of the provisions for "household utensils" and "articles having as an essential feature an electrical element or device" in paragraphs 339 and 353 respectively of the Tariff Act of 1930, predecessors of the present competing provisions. Although it was well settled prior to the effective date of the TSUS that lighting fixtures and lamps were properly dutiable under paragraph 397 of the 1930 act,[4] in the context of the present competing TSUS provisions the rationale of the decisions which considered the relative specificity of paragraphs 339 and 353 is helpful in resolving the present case despite the change in statutory phraseology.

United States v. *Electrolux Corp.*, 46 CCPA 143, C.A.D. 718 (1959) is a leading case considering the relative specificity of paragraphs 339 and 353. There, the appellate court observed (46 CCPA at page 148):

> * * * Applying the latter rule [relative specificity], it seems to us that the appellee is on sound ground in contending that "*house-*

[4] Lighting fixtures and lamps were held properly dutiable under paragraph 397, the basket provision for metal articles, because of the legislative history of that paragraph. See *Biddle Purchasing Co.* v. *United States*, 30 CCPA 71, C.A.D. 823 (1963); *National Carloading Corp.* v. *United States*, 44 CCPA 77, C.A.D. 640 (1957). *United States* v. *N. Minami & Co., Inc.*, 29 CCPA 169, C.A.D. 188 (1941); *Silvine Importers, Inc.* v. *United States*, 59 Cust. Ct. 355, C.D. 3168 (1967); *Southwestern Electric Company* v. *United States*, 58 Cust. Ct. 134, C.D. 2906 (1967); and *Nife, Inc.* v. *United States*, 40 Cust. Ct. 570, Abs. 61976 (1958). But in *G. E. Meissner Co.* v. *United States*, 73 Treas. Dec. 791, T.D. 49556 (1938), so-called touch lamps were held properly dutiable under paragraph 339 as "household utensils" rather than under paragraph 353 as "articles having as an essential feature an electrical element or device". The *Meissner* decision was predicated on the "rule" that "a use provision must prevail over one covering articles having as an essential feature an electrical element" (73 Treas. Dec. at page 793). It should be noted, however, that the *Meissner* decision antedated the above cited line of decisions which held that lighting fixtures and lamps were properly dutiable under paragraph 397. Moreover, the holding of Meissner—that paragraph 339 was more specific than paragraph 353—was rejected in *United States* v. *Electrolux Corp.*, 46 CCPA 143, C.A.D. 718 (1959).

hold utensils" is a very broad class indeed, aptly describing not only electrical appliances of all kinds but any useful tool, implement, instrument or vessel used in the household. We are of the view that "articles having as an essential feature an electrical element or device," paragraph 353 more closely describes an electric floor polisher and we agree with appellee that *the latter provision is more specific because it is less easily satisfied.* * * * [Emphasis added.]

The rationale of *Electrolux* that electrical household appliances are more specifically described by paragraph 353 than paragraph 339 was followed in a long line of decisions involving: battery-operated vacuum brushes (*Bruce Duncan Company, a/c Sims-Worms* v. *United States*, 45 Cust. Ct. 85, C.D. 2202 (1960)); food juicers (*Rotel Corp. of America* v. *United States*, 46 Cust. Ct. 538, Abs. 65798 (1961)); battery-operated night lamps (*Southwestern Electric Company* v. *United States*, 58 Cust. Ct. 134, C.D. 2906 (1967)); battery-operated Christmas tree and Santa Claus lanterns (*John A. Steer Company* v. *United States*, 53 Cust. Ct. 229, Abs. 68673 (1964)); battery-operated mix-masters (*F. B. Vandegrift & Co., Inc.* v. *United States*, 53 Cust. Ct. 231, Abs. 68674 (1964)); and face massagers (*Seprol, Inc.* v. *United States*, 48 Cust. Ct. 480, Abs. 66856 (1962)).

Following the rationale of *Electrolux*, I have determined that the term "household articles" represents "a very broad class", while the term "electrical articles" "is less easily satisfied". Consequently, I hold that the "Multi-Lites" are more specifically described by item 688.40 than by item 772.15.

Defendant strenuously argues that classification of the imports under item 772.15 is compelled by the fact that "household articles" is a "use" designation, while item 688.40 is a descriptive provision. However, I have noted that a similar contention was unsuccessfully urged before the Court of Customs and Patent Appeals in *Electrolux* respecting paragraph 339 of the 1930 act, and before Judge Richardson in *Batlin* respecting the TSUS provisions for "household articles".

Additionally, there is no merit to defendant's contention that item 772.15 is more specific than item 688.40 because the former provision is limited by component material of chief value (rubber or plastics). Citing its *Electrolux* holding and additional cases, the appellate court in *Simon Saw & Steel Co.* held that the provision in paragraph 340 of the 1930 act for circular saws was "narrower in scope and is more limited in its application to different articles" than was the provision in paragraph 352 for cutting tools of any kind, notwithstanding that the latter provision was a "use" provision, and was limited to tools containing alloying materials exceeding certain specified percentages.

Hence, in view of the *Electrolux*, *Simon Saw* and *Batlin* decisions, it is clear that a use provision limited by component material of chief

value is not *ipso facto* more specific than a descriptive provision having a relatively more narrow and limited application.

Moreover, the following comments of the Tariff Commission in the *Summaries of Trade and Tariff Information* (1968), schedule 7, volume 7, pages 65–68, while not conclusive, are indicative of the nonelectrical nature of the rubber or plastics articles which the drafters of the tariff schedules intended should be covered by item 772.15:[5]

Description and uses

This summary covers: (1) Rubber or plastics articles that are chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients and are specially provided for in the tariff schedules (TSUS items 772.03–.09) (2) Rubber or plastics articles that are not specially provided for either under 772.03–.09, or elsewhere in the tariff schedules (TSUS item 772.15). The first group consist chiefly of melamine dinnerware. Such dinnerware is made from melamine synthetic resin and is characterized by its resistance to heat and food acids. *Among the variety of heterogeneous articles included in the second group are coasters, tumblers, decorative toothpicks, soap dishes, salad sets, waste baskets, garment protectors, and miscellaneous containers except those used for the packing, transporting, or marketing of merchandise.* Both groups include articles used in establishments such as restaurants, cafeterias and institutions, as well as in the home. [Emphasis added.]

Somewhat related rubber or plastics articles covered in other summaries include: containers chiefly used for the packing, transporting, or marketing of merchandise (item 772.20); buckets or pails (item 772.25); curtains, drapes, napkins, table covers, doilies, furniture slipcovers, and similar articles (item 772.35); and caps, lids, seals, stoppers, and other closures (item 772.85).

* * * * * * *

U.S. Imports

* * * * * * *

As is shown in table 3, somewhat more than 80 percent of the value of the imports under consideration has been made up of a miscellaneous group of rubber and plastics housewares (TSUS item 772.15). *Some of the more important of these articles known to have been imported in 1966 were: bathmats, mattress and pillow covers, tumblers, planters, garment bags, flower pots, drinking cups, lampshades, towel racks, and salad bowl sets.* * * * [Emphasis added.]

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[5] The *Summaries of Trade and Tariff Information* have been referred to by our appellate court as an aid in determining the scope of tariff provisions. See e.g., *American Bristle & Hair Drawing Co., Keer Maurer & Co. v. United States*, 59 CCPA 104, 108, C.A.D. 1048, 458 F. 2d 524, 527 (1972); *Tunross Supply Co., Inc. v. United States*, 58 CCPA 26, 31, C.A.D. 1000, 433 F. 2d 1232, 1236 (1970). See also *Lyons Export & Import, Inc. v. United States*, 59 CCPA 142, 144, C.A.D. 1056, 461 F. 2d 830, 831 (1972).

Significantly, among the many examples of the rubber and plastics articles covered by the summary under item 772.15, and the related rubber and plastics articles covered in other summaries, not a single electrical article is mentioned. The absence of any mention of electrical household articles is consistent with the conclusion reached herein that such articles are properly dutiable under item 688.40.

Finally, it should be noted that schedule 6, part 5 of the tariff schedules provides *eo nomine* for many household electric articles. See e.g. items 683.30, 683.32, 684.20, 684.30, and 684.50. Thus, there is no doubt Congress intended that item 688.40 should cover household electric articles not specially provided for.

In summary, I find that there is no genuine issue of fact to be tried in this case; and that as a matter of law the "Multi-Lite" articles, assessed with duty at the rate of 8.5 per centum ad valorem under item 772.15, TSUS, as modified by T.D. 68–9, are properly dutiable at the rate of 5.5 per centum ad valorem under item 688.40, as modified by T.D. 68–9, as claimed by plaintiff. Accordingly, it is hereby

ORDERED THAT:

Plaintiff's name in the caption of this action is amended to read: "Prestigeline (Div. of Weiman Co., Inc.)";

Plaintiff's motion for summary judgment is granted;

Defendant's cross-motions for summary judgment and dismissal are denied;

The regional commissioner of Customs at the port of New York shall reliquidate the entries covered by this civil action in accordance with this decision.

Judgment will be entered accordingly.

(C.D. 4619)

POLLARD BEARINGS CORPORATION *v.* UNITED STATES

Integral shaft bearings

At the most, Government's alternative claim as ball or roller bearings, if properly established, can negate plaintiff's contrary claims, but does not entitle the Government to have an affirmative judgment, as it merely results in the overruling of plaintiff's claims without affirming the customs classification. *Herrmann & Jacobs, Inc.* v. *United States*, 29 CCPA 279, C.A.D. 203 (1942).

The burden of proof upon the Government's alternative claim is upon the Government. *United States* v. *White Sulphur Springs*

Co., 21 CCPA 203, T.D. 46728 (1933); *Packard Instrument Co. et al. v. United States*, 60 CCPA 66, 68, C.A.D. 1082, 471 F. 2d 636 (1973).

Integral shaft bearings designed to cope with support stresses on the shaft as well as friction are more than ball or roller bearings designed, without an integral shaft, to convert sliding friction into rolling friction.

HELD. Upon consideration of the argument and record in this case, integral shaft bearings should be classified as parts of piston-type engines under TSUS item 660.52.

Court No. 70/61480

Port of New York

[Judgment for plaintiff.]

(Decided on remand [C.A.D. 1146] December 15, 1975)

Donohue and Donohue (*John P. Donohue* and *James A. Geraghty* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance* and *Robert B. Silverman*, trial attorneys), for the defendant.

LANDIS, Judge: This case, involving the classification of integral shaft bearings as parts of pumps for liquids under TSUS item 660.90, is here on remand from the United States Court of Customs and Patent Appeals. *Pollard Bearings Corporation* v. *United States*, 62 CCPA 61, C.A.D. 1146, 511 F. 2d 568 (1975). The appeals court held that the imported integral shaft bearings were "more than" parts for automobile water pumps and reversed this court's decision sustaining the customs classification of the integral shaft bearings as pump parts under TSUS item 660.90. *Pollard Bearings Corporation* v. *United States*, 71 Cust. Ct. 1, C.D. 4461, 363 F. Supp. 1191 (1973). Remand was ordered to provide this court the opportunity to express its views on the issues raised by the claims on both sides with respect to the proper classification of integral shaft bearings under TSUS other than as pump parts.

On remand, therefore, I am brought to consider plaintiff's claims that integral shaft bearings should be classified either under TSUS item 660.52 as parts of piston-type engines, or under item 692.25, as parts of motor vehicles. Both those items specify a duty rate of 8.5 per centum ad valorem. Also, before me for consideration is defendant's alternative claim tactically [1] alleging that integral shaft bear-

[1] Tactically because if defendant's alternative claim is properly established it can negate plaintiff's contrary claims but does not entitle defendant to have an affirmative judgment as it merely results in the overruling of plaintiff's claims without affirming the customs classification. *Herrmann & Jacobs, Inc.* v. *United States*, 29 CCPA 279, C.A.D. 203 (1942).

ings that are not pump parts cannot be classified as parts of engines or motor vehicles because integral shaft bearings are specifically provided for in the provision under TSUS item 680.35 for ball or roller bearings, dutiable at 3.4 cents per pound plus 15 per centum ad valorem.[2]

The gist of defendant's memorandum arguing the item 680.35 claim is that as commonly understood, and as Congress understood, the term "ball or roller bearings" included integral shaft bearings. However, as between plaintiff's claimed provisions, defendant notes that the tariff provision for parts of piston-type engines (item 660.52) covers integral shaft bearings more specifically than does the tariff provision for parts of motor vehicles (item 692.25)[3] and if plaintiff is to prevail the court should grant judgment for plaintiff based on item 660.52 rather than item 692.25.[4] Plaintiff is not inclined to differ with defendant's latter assessment.

In this case, both sides have directed their strongest argument [5] to the questions posed by defendant's contention that when Congress specifically provided for "ball or roller bearings" in TSUS item 680.35, it understood the common meaning of the term to include integral shaft bearings and that merchandise such as that imported should be classified under item 680.35. However, upon consideration of the record and argument I conclude that the term "ball or roller bearings," in the common meaning used by Congress in TSUS item 680.35,[6] did not include integral shaft bearings.

Defendant agrees that "ball or roller bearings," as commonly understood, consist of (1) a set of rolling elements, (2) an outer ring or shell, and (3) an inner ring, which function to convert sliding friction into rolling friction. Integral shaft bearings, as the record attests, consist of (1) a set of rolling elements, (2) an outer ring but no inner ring. Grooves cut into the integral shaft eliminate the necessity for a separate inner ring. Witnesses for both sides, as defendant points out, offered differing opinions as to whether the term "ball or roller bearings" in common meaning included integral

[2] TSUS provides as a matter of law:

10. General Interpretative Rules. For the purposes of these schedules—

• • • • • • •

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, *but does not prevail over a specific provision for such part.* [Emphasis added.]

[3] Defendant's memorandum on remand, page 3 footnote.

[4] In customs classification, merchandise covered by either of two tariff provisions is classifiable under the provision that is relatively more specific and definite. *United States* v. *Simon Saw & Steel Company*, 51 CCPA 33, C.A.D. 834 (1964).

[5] Both sides replied to each others supporting memoranda.

[6] *Sears, Roebuck and Co.* v. *United States*, 46 CCPA 79, C.A.D. 701 (1959).

shaft bearings. The testimony is, therefore, not helpful to the court and I give it no weight.[7] Defendant, on the evidence in this record, having failed to make out a case for classification under item 680.35, although the burden of proof rested on it to do so,[8] proceeds to argue that lexicons and the legislative history associated with the amendment that changed the provision "Ball or roller bearings, and parts thereof" to read "Ball or roller bearings, including such bearings with integral shafts, and parts thereof,"[9] support its position that in common meaning, and as Congress understood, the term "Ball or roller bearings" included integral shaft bearings.

The definitions cited by defendant[10] do mention that in a ball bearing the "shaft" or "journal" turns or works upon rings of balls that convert sliding friction into rolling friction. But none of the definitions specifically imply that the shaft or journal is integral.[11] To me, it is more significant that Congress has provided for ball or roller bearings in tariff acts as far back as the Tariff Act of 1909 and that at some relevant time Congress must have become aware that in the tariff sense:

> * * * Antifriction bearings consist of metal balls or rollers fitted between two metal cases in such a way that a shaft may be inserted into the inner case, and the outer case into the bearing frame, the contact between the two cases being through balls or rollers. This arrangement substitutes a rolling contact for the sliding contact of the ordinary bearing and thus reduces friction.

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[7] Common meaning is a question of law. Evidence as to common meaning may be helpful but is only advisory to the court. *United States* v. *C. J. Tower & Sons of Buffalo, N. Y.*, 48 CCPA 87, C.A.D. 770 (1961).

[8] *United States* v. *White Sulphur Springs Co.*, 21 CCPA 203, T.D. 46728 (1933); *Packard Instrument Co. et al.* v. *United States*, 60 CCPA 66, 68, C.A.D. 1082, 471 F. 2d 636 (1973).

[9] TSUS did not on the dates covered by the entries in this case specifically provide for integral shaft bearings. Subsequent to these importations, in late 1965, Congress in the Technical Amendments Act of 1965, 79 Stat. 933, 940, amended the heading "Ball or roller bearings, and parts thereof" to read "Ball or roller bearings, including such bearings with integral shafts and parts thereof." Ball bearings with integral shafts are presently identified in TSUS as item 680.33.

[10] Defendant cites the following definitions:

Funk & Wagnall's New "Standard" Dictionary of the English Language (1956), at p. 215:

A bearing in which the *shaft* at its points of support rests upon or is surrounded by small balls that turn freely as the shaft revolves.

Webster's Third New International Dictionary, Unabridged (1963), at p. 167:

A bearing in which the *journal* turns upon loose hardened steel balls that roll easily in a race and thus convert sliding friction into rolling friction.

Audels' New Mechanical Dictionary (1960), at p. 53:

A bearing whose *journal* works upon rings of balls, which roll easily in their grooves or races. Friction upon a series of points is thus substituted for that upon a surface, thus eliminating a considerable amount of total friction. . . . [Emphasis added.]

Chamber's Technical Dictionary (1953), at p. 73:

A *shaft* bearing consisting of a number of hardened steel balls which roll between an inner race forced onto the *shaft* and an outer race carried in a housing. . . . [Emphasis added.]

[Defendant's memorandum, pages 3–4.]

[11] Integral means: "1. Constituting a completed whole. 2. Constituting an essential part of a whole necessary for completeness; intrinsic * * *" (*Funk & Wagnalls Standard Dictionary of the English Language*, International Edition (1963)).

> The automobile industry is the largest consumer of ball and roller bearings; the bicycle affords examples of the use of the former variety. Some antifriction bearings are used in screw-jacks, many machine tools, elevators, etc. [United States Tariff Commission, *Dictionary of Tariff Information* (1924), page 35.]

In the historical tariff sense, therefore, a shaft was not commonly understood as necessary to the completeness of a ball or roller bearing that is designed in a way that a shaft may be inserted into the inner case or ring. The shaft, on the other hand, is intrinsic to the completeness of an integral shaft bearing. Physically and functionally, because of the shaft, I find that an integral shaft bearing is more than a ball bearing: (1) Physically, because in common meaning the term "ball bearing" does not include a shaft, (2) functionally, because on this record, as the court of appeals found, the integral shaft bearings are designed in accordance with the stresses resulting from the automobile fan supporting and the rotating function rather than from the stresses resulting from the automobile water impeller supporting and the rotating function of the bearing. There is no evidence that ball or roller bearings that functionally cope with friction are also designed to handle support stresses.

Defendant to the contrary, I am of the opinion that when Congress, in 1965, amended the provision "Ball or roller bearings" to read "Ball or roller hearings, including such bearings with integral shafts," it did so not to merely clarify an understanding that the term "ball or roller hearings" commonly included integral shaft bearings, *Velan Steam Spec. & Velan Valve Corp.* v. *United States*, 57 CCPA 58, C.A.D. 976, 420 F. 2d 1399 (1970); *United States* v. *Geo. Wm. Rueff, Inc.*, 41 CCPA 95, C.A.D. 535 (1953), but to create a "specific category for ball bearings with integral shafts" at the same rate (12 per centum ad valorem) which the Customs Service applied when it classified shaft bearings as a "pump part,"[12] rather than as ball or roller bearings. Also, creating a specific category for integral shaft bearings, administratively classified as pump parts in this case, strikes me as a legislative admission that in common meaning the term "ball or roller bearings" did not include integral shaft bearings, *Westfeldt Brothers* v. *United States*, 36 Cust. Ct. 112, 118, C.D. 1760 (1956); *Sears, Roebuck & Co.* v. *United States*, 2 Ct. Cust. Appls. 451, 453–54, T.D. 32203 (1912); *Thalson Co.* v. *United States*, 64 Cust. Ct. 418, C.D. 4011 (1970); *A. F. Burstrom* v. *United States*, 36 Cust. Ct. 46, 50, C.D. 1752 (1956), *aff'd* 44 CCPA 27, C.A.D. 631 (1956); *John Horvath Company* v. *United States*, 59 Cust. Ct. 397, 404, C.D. 3174, 274 F. Supp. 986 (1967). The court is also not aware that Congress

[12] 2 U.S. Code Cong. & Admin. News 1965, pages 3416, 3443.

has ever, in a clarifying amendment, specified a rate of duty (for the article clarifyingly included in the original provision) different from the duty rate originally specified in the original provision. *Cf. Ralph C. Coxhead Corp.* v. *United States*, 22 CCPA 96, 101, T.D. 47080 (1934). Also, if Congress intended to merely clarify that the superior heading "ball or roller bearings" necessarily included such bearings with integral shafts, then it seems odd that the inferior headings under the alleged clarifying amendment would provide different rates of duty for ball bearings with integral shafts and other bearings.

Defendant, as previously stated, except for its claim as ball or roller bearings, has expressed the opinion that, on this record, integral shaft bearings are classifiable under item 660.52 as parts of piston-type engines. Plaintiff, while recognizing that it is the province of the court to decide the proper classification of integral shaft bearings, agrees. Integral shaft bearings, as above noted, are currently specifically provided for in TSUS. Plaintiff's alternative claims under items 660.52 and 692.25 both specify a duty rate of 8.5 per centum ad valorem. Defendant having conceded that item 660.52 is relatively more specific as to the imported integral shaft bearings than is item 692.25, I hold that the imported integral shaft bearings should be classified under item 660.52.

Judgment will be entered accordingly.

(C.D. 4620)

ARNOLD PICKLE & OLIVE CO. *v.* UNITED STATES

Vegetables in brine

EXPORT VALUE—COST OF PACKING

The absence of proof of the cost of inspecting and grading cucumbers sold by Mexican farmers and exported from Mexico (after being placed in brine by the importer's agent) prevented the completion of a method of proof of export value consisting of proof of the export price of the cucumbers plus proof of the packing costs.

EXPORT VALUE—VEGETABLES PACKED IN BRINE

A tariff classification as vegetables packed in brine held not to preclude a proof of export value in a manner other than as a unitary price for the vegetable and brine. Where, in effect, the importer is responsible for the packing in brine which takes place prior to exportation, export value may be the export price of the vegetable plus the cost of packing.

Court No. 73-1-00128

Port of Nogales

[Judgment for defendant.]

(Decided December 15, 1975)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

WATSON, Judge: This case involves the dutiable value of seven entries of cucumbers packed in brine which were imported from Mexico in 1971 for use by plaintiff in the making of pickles. This merchandise was classified as other vegetables, packed in brine,[1] and appraised on the basis of export value [2] in amounts ranging from 0.0325 to 0.0348 cents per pound.

Plaintiff claims an export value expressed in terms of a value per hundred pounds depending on the grade of cucumber [3] plus an amount of $15.00 for salt and $24.19 for ice per truck load.

This somewhat unusual dispute centers on the transactions by which the importer obtained the imported merchandise and the manner in which the merchandise was shipped.

The government viewed the transaction giving rise to export value as being a sale from the firm of Pickle-Mex to Arnold Pickle & Olive Co. (hereinafter referred to as Arnold). Plaintiff asserts that the business of the two companies is conducted in such a manner and they are so interrelated that no sales could, or indeed did, take place between them.

Plaintiff argues that the transaction in which export value was generated was the sale of the cucumbers by the Mexican growers to Pickle-Mex. Defendant responds that only *after* these sales was the merchandise placed in brine and, therefore, it could not have an export value which did not reflect its condition as imported and as classified which was vegetables in brine, not raw vegetables plus packing.[4] Plaintiff replies that the existence of a classification for vegetables in brine does not logically preclude the treatment of the brine as packing for valuation purposes.

Defendant maintains its objection to plaintiff's approach as a distortion of export value into constructed value [5] and a blurring of

[1] Item 141.75 of the Tariff Schedules of the United States.
[2] Section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956.
[3] $4.99 for grade No. 1, $3.99 for grade Nos. 2 and 3 and $1.50 for grade Nos. 4 and 5.
[4] Fresh raw cucumbers would be classifiable under items 135.90 through 135.94, TSUS.
[5] Section 402(d) of the Tariff Act of 1930, as amended byt he Customs Simplification Act of 1956.

the distinction between raw cucumbers and cucumbers in brine. Defendant raises additional objections to plaintiff's proof, those of note being a single sale of cucumbers by Pickle-Mex to another United States purchaser and a failure by plaintiff to prove the full packing costs.

Up to a point, plaintiff has persuaded me as to the correctness of its position. However, the incompleteness of its proof as to packing costs causes it to fall short of satisfying its burden of proof.

Arnold is a partnership between the father, uncle and aunt of Byron Arnold, Jr., one of the two partners in Pickle-Mex. Mr. Arnold, Jr. is also the general manager of plaintiff, acting to acquire the cucumbers on behalf of both Arnold and Pickle-Mex. Pickle-Mex obtained cucumbers in Mexico for plaintiff—70% from land leased by Pickle-Mex in the name of a Mexican employee and 30% purchased by contract from independent farmers. The evidence establishes to my satisfaction that no sales of specific merchandise took place between Arnold and Pickle-Mex but rather that Pickle-Mex was provided with money by Arnold on a weekly or as-needed basis without any exact settlement of accounts. In effect, Pickle-Mex acted as an agent or even as the alter ego of Arnold in Mexico and there could be no sales transactions between them giving rise to export value.

I am of the opinion, based on the testimony of the import specialist who made the advisory appraisements ultimately adopted by the district director, that the appraisement was predicated on the existence of sales between Pickle-Mex and Arnold, and upon findings as to the price between them; assumptions which have not been proved erroneous, thereby undermining the correctness of the appraisement.

I am further of the opinion that it is entirely possible for the export value of these cucumbers to be the price at which the growers sold them to Pickle-Mex plus the latter's cost of readying and packing the cucumbers for shipping. But for the absence of proof regarding the expenses incurred by Pickle-Mex in inspecting and grading the cucumbers delivered to it by the growers, I would be satisfied with plaintiff's proof of export value.

From the testimony and particularly the affidavits of the growers, I find that the cucumbers in question were freely sold to Pickle-Mex for export at prices which were arrived at by arm's length negotiation and were the prices at which this merchandise was sold in the principal markets of Mexico for exportation to the United States, which evidently was the only destination for cucumbers of this type.

After the growers delivered the cucumbers to Pickle-Mex five to ten percent of them would be inspected and graded or sized on a special machine to establish the percentage of the various grades present. After the delivery was weighed, the cucumbers were dumped into a truck whose interior had a polyethylene liner. Salt and water were then added to create the brine in which the cucumbers were shipped. The brine (in which the importation remained for less than 24 hours) served to protect the cucumbers in transit across the border and to obtain for them the more favorable tariff classification of vegetables in brine. This method of transportation did not advance the cucumbers towards "pickleness" but did increase their salt content. The shipping brine was usually discarded when plaintiff began the pickling process.

The immersion in brine was clearly a packing process which in the ordinary determination of export value is added to the price for export to the United States. The fact that the tariff classification describes the importation by reference to the medium in which it is packed does not indicate to me that its value must be proved in a unitary manner as packed. It merely indicates that a certain method of treating or packing vegetables, even provisionally, warrants a rate of duty different from that applied to fresh vegetables.

When a particular type of packing is named in the tariff description I consider it a proper interpretation of section 402(b) to allow proof of the cost of packing as an addition to the export price of the basic article even though as a strictly technical matter the merchandise undergoing appraisement is the combination of basic article and packing. I see this as a lesser anomaly than the alternative conclusion that an article which in all other respects has an export price cannot have an export value because it is packed for export by a party which does not sell it for export. Thus, overriding considerations of fairness would lead me, in the present circumstances, to find an export value in the export price of the cucumbers plus the cost of their packing.

Nor, in the face of proof based on scores of transactions relied on by plaintiff, would I be dissuaded from reaching such a conclusion by defendant's proof of a single transaction at a higher price between Pickle-Mex and a Colorado firm. However, I cannot accept the absence of any proof as to the cost of inspecting and grading the cucumbers in question; costs which were clearly part of readying them for export within the meaning of section 402(b). Absent such proof, plaintiff's case is incomplete and its demonstration of export value is deficient. For that reason the appraised values of this merchandise must be affirmed.

Judgment will be entered accordingly.

(C.D. 4621)

JOHN S. CONNOR, INC. *v.* UNITED STATES

On Cross-Motions for Summary Judgment

Court No. R65/12928

Port of Baltimore

[Plaintiff's motion granted.]

(Dated December 15, 1975)

Busby, Rivkin, Sherman, Levy and Rehm (*Saul L. Sherman* and *Perla M. Kuhn* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the defendant.

WATSON, Judge: This case is before the court on cross-motions for summary judgment and involves the question of the correct dutiable value of a shipment of alkylate,[1] imported from Germany in 1963 for use in the manufacture of detergents.

The merchandise was classified under item 403.60 of the TSUS,[2] a classification which ordinarily would require (in accordance with headnote 4 of schedule 4, part 1)[3] that it be appraised on the basis of the American selling price[4] of similar competitive articles. The government, however, found no similar competitive article produced in the United States and resorted to constructed value[5] as the basis

[1] The merchandise was described in the pro forma invoice as "Light Alkyl Alkilate-Dodecylbenzene" and "Heavy Alkyl Alkilate-Tridecylbenzene."

[2] Item 403.60 provides for other cyclic organic chemical products having a benzenoid structure.

[3] Headnote 4 reads as follows:

4. The ad valorem rates provided in this part shall be based upon the American selling price, as defined in section 402 or 402a of this Act, of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in the said section 402 or 402a.

[4] Section 402(e) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

(e) AMERICAN SELLING PRICE.—For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

[5] Section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

(d) CONSTRUCTED VALUE.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise

of valuation. This resulted in a net appraised value of 38.2 cents per pound.

Plaintiff claims that the proper basis of valuation should have been American selling price, i.e., the 10.2 cents per pound price of domestically produced hard alkylates or alternatively the 11 cents per pound price of domestically produced soft alkylates for future delivery.

The fundamental question in this case is whether domestic hard alkylates were competitive articles similar to the imported soft alkylates. Since the sole noteworthy distinction between the two is that the imported soft alkylate could be used to produce a detergent which was biodegradable after use, the question may be more narrowly phrased as whether the attribute of being biodegradable, that is to say, capable of being naturally decomposed, detracts from the otherwise demonstrably similar and competitive nature of the two.

Aside from the characteristic of being biodegradable, the importation could hardly be more in conformity with the requirement of headnote 5 of schedule 4, part 1.[6] In virtually all aspects (and in the words of the headnote) it "* * * accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner." In fact, the imported soft alkylate accomplishes the same result in use in a laundry detergent as does the domestic hard alkylate. The competitive nature of the two could hardly be more direct in that the soft alkylate was specifically developed as an alternative to hard alkylates, was intended for use by detergent manufacturers in producing the same detergent products hitherto produced and did, at a comparable price, enter into a rivalry with hard alkylates. In fact, the confrontation between the two was so direct that the soft alkylates virtually replaced the hard alkylates.

Defendant stresses the biodegradable nature of the importation as indicating the creation of a new and dissimilar product. While I would not, in any way, lessen the significance of the development of a detergent ingredient which did not pose a pollution threat to this nation's waters, I do not consider the development of the added feature to have altered the fundamental similarity in use between "polluting" and "nonpolluting" detergents and the parallel similarity

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undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

[6] Headnote 5 reads as follows:

5. For the purposes of this part, any product provided for in this part shall be considered similar to, or competitive with, any imported product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.

of use between their "soft" and "hard" alkylate ingredients. The biodegradable quality of the importation is of importance only *after use*, in the disposal phase, a circumstance which I do not think should control a decision as to similarity and competitiveness *in use*. The biodegradable attribute is a desirable additional feature, not a primary function of the importation, and I understand the tariff schedule's emphasis here to be on primary function.

Furthermore, I read the language of headnotes 4 and 5, *supra*, as being relatively unconcerned with unessential or nonfunctional differences between the imported product and the domestic product. This undoubtedly derives from the fact that valuation by American selling price was intended to protect the manufacturers of certain domestic products vis-à-vis similar competing imported products. *Albert F. Maurer Co.* v. *United States*, 51 CCPA 114, 119, C.A.D. 845 1964).

In the *Maurer* case, certain Brazilian rubber overshoes were held to be similar to certain domestic rubber overshoes despite the importation's superior features. The appellate court stated, at page 120, that "[t]he fact that the modern appearance and possible advantages of the imported rubbers may make them *better* in the eyes of and preferred by some customers only serves to make them *more* competitive and is but added reason to preserve the economic protection contemplated by Congress in enacting section 336."

Although in the present circumstances the effect of utilizing American selling price happens to result in a lower valuation of this merchandise, that is no reason to demand a degree of similarity which surpasses that previously applied and which, when all is said and done, is hardly less than a demand for exactness of identity. In my opinion the requisite similarity and competitiveness exist between the imported alkylates and the domestic alkylates to warrant using the selling price of the domestic product for valuation purposes. See generally, *A. Zerkowitz & Co., Inc.* v. *United States*, 58 CCPA 60, C.A.D. 1005, 435 F. 2d 576 (1970).

Since the evidence herein clearly establishes that the usual wholesale quantity for domestic alkylates was in bulk, i.e., tank car, tank truck or barge, and that the uniform nationwide price at the relevant time was 10.2 cents per pound f.o.b. plant, that is the correct dutiable value for this merchandise. Consequently, it is not necessary to discuss plaintiff's alternative ground for valuation based on the price for future delivery of domestic soft alkylates.

It is therefore,

ORDERED that plaintiff's motion for summary judgment be, and the same hereby is, granted, and the merchandise involved herein be appraised on the basis of American selling price under section 402(e) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, at a value of 10.2 cents per pound.

(C.D. 4622)

CRAIG CORPORATION *v.* UNITED STATES

Foot switches

FOOT SWITCHES—"MORE THAN" DOCTRINE

The imported foot switch is not more than a switch. The presence of components in the foot switch other than the exact part which does the actual switching does not make the importation more than a switch since the other components are all directly related to the operation of the switch.

Court No. 72-2-00270

Port of Los Angeles

[Judgment for defendant.]

(Decided December 18, 1975)

Stein and Shostak (*James F. O'Hara* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance and John J. Mahon*, trial attorneys), for the defendant.

WATSON, Judge: In this action plaintiff contests the classification as switches[1] of certain imported foot switches used as optional accessories to stop and start tape recorders and claims they are properly classifiable as parts of tape recorders.[2] Plaintiff contends[3] these articles are more than switches in that, in addition to the "microswitch" which is at the core of their operation, they have as components a housing, pedal, springs, an electric cord and plug and a strain device to protect the electric cord. Since these other components are all primarily and directly related to the importation's function as a switch, this argument is entirely without merit.

Plaintiff's argument that the primary function of these articles is to control a tape recorder as opposed to controlling the flow of electricity in an electrical circuit, is a distinction without a difference. In their function vis-à-vis the tape recorder, these switches make or break electrical circuits within the clear meaning of the classified provision.

Finally, I derive no support for the proposition that these foot switches are more than "switches" from the case of *Pacific Instruments Corp.* v. *United States*, 64 Cust. Ct. 520, C.D. 4028 (1970). Although the conclusion was expressed therein that certain foot controls and typewriter controls were "more than" switches, the

[1] Item 685.90 of the Tariff Schedules of the United States, as modified by T.D. 68-9, dutiable at the rate of 12% ad valorem.

[2] Item 685.40 of the TSUS, as modified, *supra*, dutiable at the rate of 8% ad valorem.

[3] Plaintiff's claim for classification as electrical articles, etc. under item 688.40 of the TSUS, as modified, *supra*, was abandoned and is, accordingly, dismissed.

underlying reasons were less than completely revealed and there is no evidence regarding the similarity of those devices to the articles herein. Furthermore, the *Pacific Instruments* case was decided under the markedly different language of the Tariff Act of 1930.

In light of the above, plaintiff has failed to prove the correctness of its claims which must, consequently, be overruled.

Judgment will be entered accordingly.

(C.D. 4623)

CRAIG CORPORATION *v.* UNITED STATES

Microphones

MICROPHONES—"MORE THAN" DOCTRINE

The presence of an "on-off" switch on the imported microphones is held not to make them more than microphones in that the switch is primarily an adjunct to the use of the microphone with a tape recorder and not a separate remote control device.

Court No. 72-5-00966

Port of Los Angeles

[Judgment for defendant.]

(Decided December 18, 1975)

Stein and Shostak (*James F. O'Hara* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance and John J. Mahon*, trial attorneys), for the defendant.

WATSON, Judge: This case places in issue the tariff consequences of the presence of an "on-off" switch on certain imported microphones designed for use with tape recorders. Plaintiff claims that the presence of the switch makes them *more than* microphones and precludes defendant's classification of the importations as microphones under item 684.70 of the Tariff Schedules of the United States, as modified by T.D. 68-9.[1] Plaintiff seeks classification of these articles as parts of tape recorders[2] under item 685.40 of the TSUS, as modified, *supra*.[3]

Although the importations are indisputably parts of tape recorders, General Interpretative Rule 10(ij) states that in the tariff schedules a

[1] As classified the rates of duty would be 12, 10 or 9 percent ad valorem, depending on the dates of entry.

[2] Plaintiff's claim for classification as electrical articles, etc. under item 688.40 of the TSUS, as modified, *supra*, was abandoned and is, accordingly, dismissed. Plaintiff's claim as to microphone model No. 2408 in entry 204802 having been abandoned is dismissed as well.

[3] As claimed the rates of duty would be 9, 8 or 6.5 percent ad valorem, depending on the dates of entry

provision for an article *as a part* does not prevail over a *specific provision* for such part. Thus, if the importations are microphones, they will be classified as such even though they are also parts of tape recorders.

I have not been persuaded by plaintiff that the presence of the on-off switch on these microphones makes them other than microphones since I view its presence as being, for the most part, auxiliary to the use of the microphones.

After the microphone is attached to the tape recorder, the switch must be in the "on" position in order for the tape recorder to work at all. The switch can then be used as a remote control to stop and start recording (assuming the main controls are already in the record mode) and to stop and start playback of recorded material (assuming the main controls are already in the playback mode).

In my opinion, the aforementioned capabilities of the switch are all derived from its fundamental role as an adjunct to the use of the microphone in recording, as a convenience in stopping and starting the recording process without resort to the main controls. In my view, the testimony will not support the proposition that the switch functions as a remote control device in a significant manner, separate and apart from its relation to the operation of the microphone. Consequently, the presence of the switch does not indicate the existence of either a genuine multifunctional article or an article which is more than a microphone.

In this respect, the switch under discussion is like the flashlight component which did not make the importation more than a screwdriver in *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966), or the additional capability for coordination with X-ray apparatus and operation by automatic remote control which did not make the importation more than a syringe in *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970).

The switch, in its relation to the microphone, is not comparable to the gear assembly and motor combination which was held to be more than a motor in *United States* v. *The A. W. Fenton Co., Inc.*, 49 CCPA 45, C.A.D. 794 (1962). Nor can any support for plaintiff's position be derived from the case of *Edo Commercial Corp. et al.* v. *United States*, 65 Cust. Ct. 30, C.D. 4049 (1970). In *Edo* a claim that the importations were microphones could not be maintained in the face of evidence that the devices in question had *two coequal functions;* one, the conversion of sound to electrical energy associated with microphones and the other, the conversion of electrical energy to sound associated with loudspeakers. Nothing approaching that equality of function has been proven here.

For the reasons discussed above, these importations were properly classified as microphones rather than as parts of tape recorders.

Judgment will be entered accordingly.

(C.D. 4624)

GIVEN INTERNATIONAL, INC. *v.* UNITED STATES

Cost of production

COST OF PRODUCTION

The determination of a cost of production value for an importation by means of deductions from a resale price is not in comformity with the requirements of section 402a of the Tariff Act of 1930, as amended, and is not reasonable within the meaning of section 500 of said act.

COST OF PRODUCTION

The testimony of the export manager of the manufacturer was sufficient to prove the cost of production of the imported merchandise.

Court No. R69/8770

Port of Los Angeles

[Judgment for plaintiff.]

(Decided December 22, 1975)

Stein and Shostak (*Marjorie M. Shostak* and *Theo B. Audett* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Michael S. O'Rourke* and *Edward S. Rudofsky*, trial attorneys), for the defendant.

WATSON, Judge: This is a dispute over the cost of production [1] of certain lathes and accessories exported from Japan in 1968. Defendant appraised the lathes at a value of $8100 each, less 20%, less ocean freight and insurance, less duty included, resulting in an appraised value of $5103.

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[1] Section 402a of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

(f) COST OF PRODUCTION.—For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise.

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

The appraisement was based on the resale price in the United States (less appropriate deductions) of Kanematsu New York, Inc., a firm which, during the period in question, also sold such merchandise here.

This appraisement procedure bears no resemblance to statutory cost of production and the resulting appraised value was erroneous. Arriving at a "cost of production" by making a series of deductions from a resale price is not a *reasonable* way to ascertain cost of production within the generally broad powers granted the appraising official in section 500 of the Tariff Act of 1930.[2] *Ellis Silver Co., Inc.* v. *United States*, 63 Cust. Ct. 647, 656, R.D. 11688, 308 F. Supp. 704 (1969), *aff'd*, 67 Cust. Ct. 564, A.R.D. 293 (1971), *aff'd*, 60 CCPA 143, C.A.D. 1100, 477 F.2d 946 (1973); *United States* v. *A. N. Deringer, Inc.*, 46 Cust. Ct. 762, 767–68, A.R.D. 127 (1961), *appeal dismissed*, 48 CCPA 169 (1961). Even assuming an unwillingness on the part of the manufacturer involved to reveal its cost of production, I have no doubt that ways and means exist to estimate the elements of cost of production in a manner more in accordance with section 402a(f) and section 500 of the Tariff Act of 1930. The method of reasoning backward from a resale price ignores the statute entirely and is unreasonable.

Having demonstrated the incorrectness of the appraisement it remained for plaintiff to prove its own claimed costs of production. This it accomplished by the uncontradicted testimony of Sanji Masumoto, director of the export department of the manufacturer, Okuma Machinery Works, Ltd. of Nagoya, Japan. Mr. Masumoto testified as to his compilation from the manufacturer's accounting records of cost of production figures contained in plaintiff's exhibit 3 and the diligent but unsuccessful efforts which were made to ascertain the addition for profit usually made by the Japanese lathe manufacturers listed in plaintiff's exhibit 4. I am satisfied, by a preponderance of the credible evidence, that plaintiff has proved that its costs of production are contained in exhibit 3. I am further convinced the refusal of other manufacturers to reveal their addition for profit permits the use of this manufacturer's actual addition for profit as an element of its costs of production.

The defendant's objections notwithstanding, I see no reason to think that Mr. Masumoto was unqualified to compile the cost of production figures or compiled them in an improper manner. Nor is

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[2] SEC. 500. DUTIES OF APPRAISING OFFICERS.

(a) APPRAISER.—It shall be the duty of the appraiser under such rules and regulations as the Secretary of the Treasury may prescribe—

(1) to appraise the merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or cost of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;

there any reason to believe the inquiries to other manufacturers were other than proper in form and content. In short, I exercise the prerogative of a trial judge to base conclusions of the testimony of witnesses, and I consider the testimony of Mr. Masumoto to be worthy of belief on the subject of the cost of production of this merchandise.

Based on the above, I find that defendant's calculation of the cost of production of this merchandise was erroneous. I also find that due diligence was exercised in an unsuccessful attempt to ascertain the addition for profit of other Japanese lathe manufacturers, failing which this manufacturer's own addition for profit was properly used. I further find that plaintiff has proved the costs of production it claims.

I make the following specific findings of fact:

1. That the merchandise involved in the instant appeal for reappraisement consists of LS 540 x 1500 lathes, with accessories, exported from Japan on December 22, 1968.

2. That said merchandise appears on the Final List of the Secretary of the Treasury, T.D. 54521.

3. That said merchandise was appraised on the basis of cost of production under section 402a(f) of the Tariff Act of 1930, as amended.

4. That the cost of materials and fabrication of the imported merchandise is as follows:

LS 540 x 1500 lathe (exclusive of accessories)	¥946,000
Steady rest, 12–130 mm.	28,800
Follow rest, 12–50 mm.	18,000
4-jaw chuck 300	36,000
Ammeter	2,520
Coolant equipment	29,160

5. That the usual general expenses in the case of such merchandise, incurred in its production for exportation to the United States, were as follows:

LS 540 x 1500 lathe (exclusive of accessories)	¥132,000
Steady rest, 12–130 mm.	4,320
Follow rest, 12–50 mm.	1,440
4-jaw chuck 300	2,880
Ammeter	180
Coolant equipment	3,600

6. That the profit actually added in the manufacture of this merchandise was as follows:

LS 540 x 1500 lathe (exclusive of accessories)	¥227,000
Steady rest, 12–130 mm.	8,280
Follow rest, 12–50 mm.	3,600
4-jaw chuck 300	4,320
Ammeter	360
Coolant equipment	6,840

7. That the cost of packing said merchandise was ¥67,000.

I reach the following conclusions of law:

1. Cost of production as defined in section 402a(f) of the Tariff Act of 1930, as amended, is the proper basis of appraisement of the merchandise involved herein.

2. The usual general expenses as defined in section 402a(f)(2) of the Tariff Act of 1930, as amended, are those incurred in the production of the merchandise for exportation to the United States.

3. The profit ordinarily added, as defined in section 402a(f)(4) of the Tariff Act of 1930, as amended, is the profit actually added by the manufacturer of the merchandise involved herein.

4. The cost of production of the involved merchandise as computed from the elements set forth in the findings of fact, including the addition of the statutory minimum for general expenses, as required by section 402a(f)(2) of the Tariff Act of 1930, as amended, is as follows:

LS 540 x 1500 lathe (exclusive of accessories)	¥1, 372, 000
Steady rest, 12–130 mm.	41, 400
Follow rest, 12–50 mm.	23, 400
4-jaw chuck 300	43, 920
Ammeter	3, 132
Coolant equipment	39, 600

Judgment will be entered accordingly.

(C.D. 4625)

ACETO CHEMICAL CO., INC. *v.* UNITED STATES

On Cross-Motions for Summary Judgment

Court No. 72-2-00263

Port of New York

[Plaintiff's motion granted.]

(Dated December 29, 1975)

Murray Sklaroff for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Ira J. Grossman*, trial attorney), for the defendant.

WATSON, Judge: These cross-motions for summary judgment center on the presence in the imported fungicide of about three-quarters of a percent of a benzenoid wetting agent. The wetting agent, which is not itself fungicidal in nature, eases the dispersion of the powder in liquid and thus aids the spreading and penetration of the fungicide in wet spray form. It should be noted that the importation may also be applied in a dry form by dusting.

The government, relying on the presence of the wetting agent; classified the importation as a mixture in part of a "benzenoid" product.[1] Plaintiff claims the importation should properly be classified as a thiuram [2] in accordance with the identity of the fungicidal ingredient present in excess of 99 percent.

Since the benzenoid ingredient is not present in an amount sufficient tc make it a quantitatively significant importation of that ingredient, the dispute centers on the function of the ingredient in the importation.

Plaintiff's claim [3] is grounded on the assertion that the language "in part" of the classified provision does not refer in the present circumstances to a minute ingredient which is not fungicidal in nature. Defendant argues that the wetting agent plays a part in enhancing the fungicidal function and the importation is therefore "in part" of the wetting agent.

Both parties rely on the decisions in *United States* v. *Cavalier Shipping Co., Inc.*, 60 CCPA 152, C.A.D. 1103, 478 F. 2d 1256 (1973), *aff'g* 67 Cust. Ct. 440, C.D. 4317, 337 F. Supp. 447 (1971), and *Northam Warren Corp.* v. *United States*, 60 CCPA 117, C.A.D. 1092, 475 F. 2d 647 (1973), *aff'g* 65 Cust. Ct. 584, C.D. 4142 (1970). In the *Cavalier Shipping* case, the presence in an insecticide of about 2 percent of a benzenoid warning agent (chloropicrin or "tear gas") was held not to justify classification as a mixture in part of a benzenoid product. In the *Northam Warren* case the presence in a pigment of less than two-tenths of a percent of a "benzenoid" optical brightener was held to justify classification under a "mixture in part" provision similar to that involved herein.[4]

The plaintiff sees these cases as supporting the proposition that a minute benzenoid ingredient will dictate the classification of an importation only if it performs the primary function of the article in which it is contained. Defendant sees the general proposition as being that a minute ingredient will control the classification so long as it "plays a part" in the principal function.

It seems reasonable to assume that all intentional ingredients serve some functional purpose in connection with the use of the particular product. Thus, it is necessary to draw a distinction between those minute ingredients which are to be considered "significant" and thus capable of controlling classification, and those minute ingredients which are not significant. The only clear and readily

[1] Item 409.00 of the Tariff Schedules of the United States, dutiable in the amount of 7 cents per pound plus 45 per centum ad valorem.

[2] Item 425.36 of the TSUS, dutiable at the rate of 10.5 per centum ad valorem.

[3] Plaintiff failed to prove its alternative claim that an established and uniform practice existed to classify this merchandise under item 425.36.

[4] Paragraph 27(a)(4)(5) of the Tariff Act of 1930, as modified by T.D. 52739, provided for mixtures in part of certain coal tar products.

determinable distinction which suggests itself to me is between minute ingredients whose use is to perform the *very function which is the function of the importation* and minute ingredients whose use is to *assist* in the primary function. In the former category I would place the optical brightener ingredient involved in *Northam Warren*. Minute as it was, it was directly involved in the appearance of a product used to give opacity and brightness to certain types of paint, varnish, lacquer and cosmetics. Therefore its "significance" in determining a tariff classification could not be minimized. In the latter category I would place the chloropicrin ingredient used as a warning device in an insecticide in *Cavalier Shipping* and the wetting agent involved herein. In this latter category I would also place the salicyclic acid ingredient used as a preservative and solvent in the medicinal preparations involved in *E. Fougera & Co.* v. *United States*, 49 Treas. Dec. 986, T.D. 41632 (1926).

The thread which unites the latter three ingredients is not their failure to "play a part" in the use of the importation or their failure to have sufficient importance in the use of the importation, but rather it is their lack of the exact characteristic which is the primary use characteristic of the importation.

Indeed the lifesaving warning function of the chloropicrin may, in an absolute sense, be the most important use-related function of all the ingredients under discussion. The preservation of a medicinal preparation is also extremely important—certainly more momentous than the addition of an increment of brightness to a cosmetic product. Yet, only the optical brightener was significant from a classification standpoint in making the importation "in part" of a benzenoid product. This came about, not because of its importance, but because its performance of the main function of the importation prevented the application of the de minimis rule.

This is the underlying principle I discern in the opinion of the CCPA in *Cavalier* when the court states at page 156 that "[t]he real issue, therefore, lies in whether the chloropicrin * * * was in fact present in 'commercially significant amount.'"

The court was thereby expressing a test based on the full extent of the de minimis rule contained in general headnote 9(f)(iv). Both the headnote, which defines "in part of" as indicating the presence of "a significant quantity of the named material," and the Tariff Classification Study,[5] which states that "in part of" is used to convey an intent that the material be present in "commercially significant amount," support a view that only in the most limited circumstances should a quantitatively minute quantity control classification. The appellate court further stated that:

[5] *Tariff Classification Study Submitting Report*, November 15, 1960, page 14.

> * * * [W]e cannot reconcile the expressed intention with respect to the meaning of "in part" in the TSUS with the restricted concept that any purposeful addition of a benzenoid product, be it to preserve life or to enhance salability, must render the article "in part" of that product. The distinction previously drawn on the basis of the primary functional role of the merchandise better satisfies that which we consider to be the true intent of the language of the TSUS. [60 CCPA at 157.]

In light of the above, when the appellate court at page 156 spoke of the exception from the de minimis rule for " * * * quantitatively insignificant amounts which nonetheless are present in sufficient quantity to perform a part in the primary function of the article," I read that as expressing, not a standard giving significance to any role *related* to the primary function but only to those roles which *are* the primary function. As stated earlier, if mere relation to the primary function is sufficient then de minimis distinctions cannot be made in a logical, consistent and predictable manner because all intentional ingredients have some relation to the primary function.

In short, I believe it is consistent with the basic intention of the tariff act that only a significant ingredient determine classification. I define significance, in the case of a minute ingredient (which would ordinarily be treated as de minimis), as the performance of the principal function, i.e., an optical function in a pigment, an insecticidal function in an insecticide, a medicinal function in a medicine and a fungicidal function in a fungicide. Since the wetting agent herein does not perform a fungicidal function, it should, consistent with its insignificant quantity, be treated in the typical de minimis fashion.

For the above reasons, it is

ORDERED, that plaintiff's motion for summary judgment be, and the same hereby is, granted, and it is further

ORDERED, that the merchandise herein be classified as a thiuram under item 425.36 of the TSUS.

DECISIONS OF THE UNITED STATES CUSTOMS COURT

Reviews

(A.R.D. 323)

PICKER CORPORATION ET AL. *v.* UNITED STATES

X-ray equipment

X-ray equipment and parts exported from Denmark by a subsidiary of the American importer was appraised on the basis of constructed value. The importer contended that export value was the proper basis, but the trial court concluded that the record fails to factually establish whether the merchandise was freely sold or, in the absence of sales, offered for sale for export to the United States to all purchasers at wholesale, or in the ordinary course of trade to one or more selected purchasers at wholesale, on an export value basis as defined in 19 U.S.C.A. § 1401a (b) and (f).

Held: Affirmed. The evidence establishes that the importer "received a special intra-company price" from its subsidiary exporter.

APPLICATION FOR REVIEW OF REAPPRAISEMENT DECISION 11768

Reappraisement R70/3316 and six others

Entered at Cleveland, Ohio
Entry Nos. 110115, etc.

First Division, Appellate Term

[Affirmed.]

(Decided September 9, 1975)

Arter & Hadden (*Robert E. Glaser* of counsel) for the appellants.
Rex E. Lee, Assistant Attorney General (*James Caffentzis*, trial attorney), for the appellee.

Before WATSON, MALETZ, and RICHARDSON, Judges

RICHARDSON, Judge: This is an application filed by the importer for a review of the decision and judgment of Landis, J., sitting

in reappraisement, 68 Cust. Ct. 276, R.D. 11768 (1972), and deciding after trial that constructed value,[1] as appraised, is the proper value of X-ray equipment and parts exported from Denmark between 1968 and 1970. The importer contended before the trial court and contends here that export value[2] is the proper basis for determining the value of this merchandise.

The record in the case consists of testimony of two witnesses in the employ of the appellant-importer, an affidavit and supplemental affidavit of two employees of the manufacturer-exporter, and other documentary exhibits, all but two of which were received in evidence on behalf of the appellant. It appears from the evidence that the manufacturer, Picker-Andrex X-Ray A/S, a subsidiary of appellant Picker Corporation, sold its x-ray equipment and parts throughout the world through distributors and wholesalers in various countries at prices set forth in price lists attached to the affidavit of its production manager, Bent Nielsen, and its controller, Eyvind Laursen (exhibit 1). As to conditions of such sales, exhibit 1 states:

> 10. That the prices set forth in all such price lists are the prices charged for the respective models, accessories, supplies and parts when sold in any quantity to distributors of ANDREX covered by such price lists and that ANDREX does not give quantity discounts.
>
> 11. That the respective models, accessories, supplies and parts set forth in all the exhibits hereto are identical physical characteristics.
>
> 12. That the prices set forth in all price lists attached hereto include all expenses incidental to placing the X-ray equipment, accessories, supplies and parts in condition, packed already for export shipment.
>
> 13. That all of sales of ANDREX during 1968, 1969 and 1970 have been made in the usual and ordinary conduct of its business.
>
> 14. That the prices set forth on all the attached pricelists are prices which are available to all distributors in the areas covered by such pricelists and that such pricelists are freely circulated to distributors of ANDREX in such areas, which distributors determine the sales price to customers in their individual countries after import has taken place in such countries.
>
> 15. That ANDREX imposes no restrictions upon the ultimate use or disposition of X-ray equipment, accessories, supplies or parts sold by it, except for those restrictions imposed upon ANDREX by the Act of the United States of America.

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[1] 19 U.S.C.A. § 1401a(d).
[2] 19 U.S.C.A. § 1401a(b).

16. That the trade conditions, practices and procedures under which ANDREX markets its products are the same as those confronting other manufacturers of similar merchandise.

It further appears from the record that William G. Langston, secretary and general counsel for appellant Picker Corporation, examined shipping documents and invoices in the manufacturer's offices in Denmark to verify the accuracy of the prices set forth in the price lists attached to exhibit 1, and was convinced of their accuracy. It was brought out through this witness that Picker-Andrex was the transfer-of-assets vehicle established by appellant Picker Corporation following its acquisition of the assets of the estate of Holger Andreasen, deceased, with whom appellant had previously done business in the importation of X-ray equipment into the United States as a distributer.

Walter L. Seibyl, marketing manager for Picker Industrial U.S., a separate operating division of appellant, testified concerning Picker-Andrex' sales practices, among other things. He stated that Andrex' prices are determined in Copenhagen by its marketing manager and general manager and they treat his company as they would any other wholesaler around the world, that Picker-Andrex markets its X-ray equipment everywhere through an international marketing organization except in the United States and Canada, and that he is responsible for marketing the products in the United States and also acts as liaison with the Canadian group, and that Picker-Andrex also sells to wholesalers in other countries of the world, some of whom are related companies.

The record also contains letters written or sent by Seibyl to the U.S. Customs Service. One letter (exhibit A) dated July 14, 1969, states:

> As per your request, please find enclosed descriptive literature on the Picker-Andrex portable X-ray equipment requested by your office on June 20, 1969.
>
> Answers to the questions you raised are as follows: Picker U.S. receives a special intra-company price from Picker-Andrex. Picker-Andrex does not sell this equipment to unrelated purchasers in the United States but only sells through the Picker Industrial domestic organization. Clarification is required on the question of what "assists" [3] Picker domestic supplies to Picker-Andrex.

[3] Although the entries covering the X-ray equipment indicate that all but two of the imported units were equipped with American-made X-ray tubes as to which item 807.00, TSUS, treatment was sought, Mr. Seibyl testified that Picker U.S. did not supply any materials for these units.

And the other letter (exhibit B) dated October 27, 1969, states:

> Enclosed is the price list which you requested from Picker-Andrex X-ray A/S. These prices are in Danish kroner, and are the prices at which the equipment is sold to Picker-Andrex agents outside of the United States.
>
> I trust that this information will give you everything you need for the file. Since this is proprietary information, I trust you will use it accordingly.

Addressing himself to these letters at the trial the witness Seibyl testified that at the time he wrote exhibit A he had not verified the information with Picker-Andrex and assumed, from a confused reply he received from Picker-Andrex, that appellant indeed received a special price. Since writing this letter he has learned, based upon a communication received from Picker-Andrex as well as from exhibit 1, that it is not true that Picker U.S. receives a special intra-company price from Andrex. And, as to exhibit B, he testified that since writing this letter and furnishing the price list it contained which was sent to him from Copenhagen he has learned from exhibit 1 that a 20 per cent discount is given to the dealer off this price list.

The witness Seibyl also testified on the subject of Picker-Andrex' warranty on its products. He testified (R. 57–58):

> Q. Would you describe to the court the situation which exists with reference to these models which have been mentioned insofar as quantities [sic] are concerned?—A. Yes. Normally, Picker-Andrex X-Ray gives us a 12-month warranty on these products. We in turn in the United States have a repair depot and an after-sales service center. So that we import them, test them, and give the warranty to the customer. We are responsible for all warranty repairs and also all repairs out of warranty.

The witness went on to state that in the case of Picker-Andrex' other wholesalers or distributors they return their units to Copenhagen for repair.

The Government did not call any witnesses, but did introduce exhibits A and B into evidence during its cross-examination of the witness Seibyl.

Before the trial court appellant contended that the imported merchandise was freely sold to all purchasers for exportation to the United States within the meaning of 19 U.S.C.A., section 1401a(f), adding that the prices of such purchasers "clearly reflects the market value of the imported merchandise." (Plaintiff's brief, p. 22.) The trial court in considering the testimony of the witnesses Langston and Seibyl found that the evidence failed to establish the manner in which sales (at the claimed prices) were made in accordance with statutory export value requirements. The court said (p. 283) "The affidavit states that all sales were made at the prices set forth in the

price lists but it does not state that the X-ray equipment was freely sold or offered for sale to all purchasers at wholesale at those prices."

The trial court also dealt with the subject of "selected purchaser," finding that there was "no creditable proof that sales for export to the United States were restricted to selected purchasers."

In its fourth assignment of error before us appellant states:

> 4. The Court was in error in determining that the merchandise was not freely sold or, in absence thereof, that it was sold to a selected purchaser.

With respect to the first phase of the fourth assignment of error concerning all purchasers at wholesale appellant argues (brief pp. 8–9):

> Andrex is not required to seek out and sell to all potential buyers. All that is necessary is that all *bona fide* purchasers of the usual wholesale quantities in the ordinary course of trade have an opportunity to buy under equal terms and conditions. [Citations omitted.] This is the situation which has been established by the evidence in this case. . . .

Appellee responds (brief, p. 12):

> . . . [T]he record made herein is devoid of any proof of either actual sales or offers of sales to any purchaser in the United States other than appellants.

We agree with the trial court's determination that appellant failed to prove that the merchandise in issue was freely sold or offered for sale to all purchasers at wholesale at the claimed prices for exportation to the United States. There was no proof of sales or offers of sales for export to the United States to anyone other than appellant.

With respect to the latter phase of the fourth assignment of error concerning selected purchasers the trial court did not find that the merchandise was sold to a selected purchaser, as this assignment of error avers. On the contrary, the trial court concluded that there was no evidence of sales to a selected purchaser, as indeed, the position of appellant in this court readily admits. In its brief appellant argues (brief, p. 12):

> Picker has proven that the imported merchandise was sold, or in the absence of sales, offered in the ordinary course of trade to one or more selected purchasers at wholesale. The proofs in this case clearly establish that the prices fairly reflect market value. . . .

Appellee's response was that appellant failed to establish that it was designated by the manufacturer as a selected purchaser or that the manufacturer would have refused to sell to others for exportation to the United States. Further, appellee argued that even assuming appellant to be a selected purchaser it failed to establish that the claimed

prices fairly reflect the market value of the merchandise measured against higher foreign home market prices.

This case was decided by the trial judge and the appeal argued before us prior to the decision of the Court of Customs and Patent Appeals in the case of *J. L. Wood* v. *United States*, 62 CCPA 25, C.A.D. 1139, 505 F. 2d 1400 (1974), which clearly defined what is required to establish proof of export value under the selected purchaser formula. In that case, involving engine heaters and car warmers exported from Canada and appraised on the basis of export value predicated on higher foreign market prices, our appeals court reviewed the legislative history of the Customs Simplification Act of 1956 and rejected this method of appraisement, stating in 505 F. 2d at p. 1405:

> . . . Although the term "market value" in section 402(f)(1)(B) was not defined in the Act, it obviously must relate to the relevant market. In the case of export value, this would be the export market in the exporting country to the United States and *not the foreign domestic market*, since use of the latter would result in a determination of foreign value, which was deleted by the Act.
>
> From the foregoing, we conclude that Congress clearly intended that export value be determined by considering only the exporting country's market for exportation to the United States and that sales at wholesale to exclusive or selected agents be used in determining export value if the prices fairly reflect the market value.[4] . . .

The holding in *Wood* closes the door on appellee's ultimate argument for sustaining the trial court's determination, predicated as it is upon an asserted lack of evidence of comparative foreign home market sales.

However, the decision of the trial court on the selected purchaser question is not inconsistent with the holding in *Wood* inasmuch as the decision below turned on the preliminary finding that appellant was not an exclusive or selected agent.

But, even assuming that appellant is a selected purchaser under the evidence presented in this record, the disputed prices do not fairly reflect the market value of the merchandise. There is evidence in the record that the disputed prices are special intra-company prices. And, although the witness Seibyl testified that he now believes that these prices are not special prices, his prior usage of this description in dealing with the customs service was predicated upon information passed on to him by the manufacturer.

Moreover, other circumstances in the record substantiate the existence of a special price arrangement between Picker U.S. and Picker-Andrex, namely, the warranty situation. It is established in the evidence that contrary to its ordinary practice the manufacturer

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[4] See: Hearings on H.R. 6040 Before the House Comm. on Ways and Means, 84th Cong., 1st Sess. 120 (1955); Hearings on H.R. 6040 Before the Senate Comm. on Finance, 84th Cong., 1st Sess. 148 (1955); 3 U.S. Code Cong. and Adm. News 4180-4181 (1956).

does not perform the warranty service on the X-ray equipment it sells to appellant. Appellant performs the warranty service on this equipment both within and beyond the warranty period, in consequence of which it maintains a service department and an inventory of repair parts. Under this state of facts we cannot agree that the manufacturer's prices to appellant for this merchandise are normal, competitive market prices when they clearly do not reflect all elements, such as warranty service, which ordinarily must enter into its pricing structure. It follows, therefore, that the customs service was correct, in our view, in treating Picker U.S.' prices as not fairly reflecting the market value of the imported merchandise, and resorting to constructed value in appraising the merchandise.

The Court of Customs and Patent Appeals in *J. L. Wood* also pointed out that export prices to third country markets could not be used in determining export value to the United States, as this possibility was discussed and rejected at the time the Customs Simplification Act of 1956 was being considered and enacted. Also the language of the statute expressly limits consideration to the price "for exportation to the United States." 19 U.S.C.A., section 1401a(b).

We, therefore, find as facts:

1. The merchandise involved herein consists of X-ray equipment and parts, exported by Picker-Andrex X-Ray A/S of Copenhagen, Denmark, in the years 1968 through 1970.

2. The merchandise was appraised on the basis of constructed value as defined in 19 U.S.C.A., section 1401a(d) (section 402(d), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956).

3. Appellant failed to prove that the invoice unit prices herein are the prices at which, at the time of exportation, such or similar merchandise was sold or, in the absence of sales, offered for sale, to either all purchasers at wholesale, or in the ordinary course of trade, to one or more selected purchasers at wholesale, at prices which fairly reflected the market value of the merchandise, in the ordinary course of trade, for exportation to the United States.

And, on these facts, we conclude as matters of law:

1. Constructed value, as defined in section 1401a(d) is the proper basis for the determination of the value of the merchandise involved herein.

2. The correct dutiable values of such merchandise are the appraised values.

The decision and judgment of the trial court is affirmed, and judgment will be entered accordingly.

DECISIONS OF THE UNITED STATES CUSTOMS COURT

Rules

(C.R.D. 75–4)

COLONNA & CO., INC. *v.* UNITED STATES

Memorandum Opinion and Order

Court No. 72–1–00066

New York

(Dated August 11, 1975)

Lamb & Lerch (*Richard J. Kaplan* of counsel) for the plaintiff.
Rex E. Lee, Assistant Attorney General (*David A. Ast*, trial attorney), for the defendant.

RE, Judge: Pursuant to rule 12.1 of the rules of this court, plaintiff has moved for rehearing and reconsideration of an order dated October 11, 1974 affecting merchandise imported under entry numbers 141274 and 543524.

The pertinent facts are as follows:

Entries 141274 and 543524 were liquidated [1] on September 4, 1970 and September 11, 1970, respectively. Within one week after each liquidation, specifically, September 11, 1970 and September 14, 1970, plaintiff filed a timely, valid protest pursuant to section 514, Tariff Act of 1930 (19 U.S.C. 1514), contesting the classification of the merchandise and the assessment of duties.

The regional commissioner's office of the Customs Service (formerly designated the Bureau of Customs) responded to plaintiff's September 1970 protests with form letters, dated May 5, 1971. Except for entry number and dates, these letters were identical in content. The first paragraph expressly referred to plaintiff's "requested reconsideration of the classification of certain merchandise* * *." The second paragraph stated:

> "Please be advised that we have reviewed the classification in the light of your claim and adhere to our original action. However, this

[1] Liquidation is defined in the Customs Regulations (19 CFR 159.1) as the "final computation or ascertainment of the duties or drawback accruing on an entry."

decision may be protested by the importer or his authorized agent within 90 days after the date of this letter by filing a protest on Customs Form 19 in quadruplicate in accordance with Section 1514(a)(7), Title 19, United States Code."

Plaintiff followed the procedure indicated and, on August 3, 1971, within 90 days thereafter, filed protest 1001–1–018099 on Customs Form 19, which stated:

"Protest is hereby made against your decisions of May 5, 1971 (Reference Nos. LIQ: 1394, BH: js, Entry No. 141274 and LIQ: 1393, BH: js, Entry No. 543524) whereby you advised that you have reviewed the classifications of certain merchandise imported under these entry numbers and had adhered to your original action. Protest was timely and is hereby made against your decision, liquidation and assessment of duties charged at 14½% ad valorem – 515.2400 on Travertine Blocks and of similar merchandise described on and covered by the entrys [sic] enumerated above. The protested administrative decision, the nature of the objection, and the reasons therefor are as follows: As to the classification and rate and amount of duties, it is claimed that the proper classification is under TSUS Item No. 515.2100 at the rate of 7¢ per cubic foot or in the alternative under TSUS Item No. 515.3100 at the rate of 10% ad val."

On August 27, 1971, the reviewing customs officer issued a form notice of denial, which is printed on that same Customs Form 19. The printed notice, which contains his checked notation, reads as follows:

(CUSTOMS USE ONLY)

"The following action has been taken on this Protest, Denied because:

☐ If approved, check here

☐ Untimely Filed

☒ Original Customs decision reviewed and found to be correct

☐ Other, namely _____

Other: _____"

Within 180 days thereafter, on January 12, 1972, plaintiff filed the summons in this action.

The September 1970 liquidations, and the September 1970 protests, are of especial significance in that they occurred shortly before October 1, 1970. On that date the Customs Courts Act of 1970, title I, Pub. L. 91–271, which revised the judicial procedures of this court, and the Customs Administrative Act of 1970, titles II and III, Pub. L. 91–271, which revised the administrative review procedures of the Customs Service, became effective.

Under section 203 of the public law, titles II and III took effect with respect to articles entered, or withdrawn from warehouse for

consumption, on or after October 1, 1970. They were also made applicable to other articles entered or withdrawn from warehouse for consumption prior thereto with respect to which a protest had not been disallowed in whole or in part before October 1, 1970. Under section 122, title I became effective on that date except for merchandise entered prior thereto for which trial had already commenced.

Since the protests were not acted upon prior to October 1, 1970, any action take thereafter was subject to the procedural requirements of Public Law 91-271.

Section 514, Tariff Act of 1930, as amended by the Customs Administrative Act of 1970 (19 U.S.C. 1514), revised the procedures for the filing of a protest; changed the period allowed for filing a protest against an administrative decision from 60 days to 90 days after notice of the decision is given; and set forth the following decisions and findings which may be protested:

> "(1) the appraised value of merchandise;
> (2) the classification and rate and amount of duties chargeable;
> (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
> (4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;
> (5) the liquidation or reliquidation of an entry, or any modification thereof;
> (6) the refusal to pay a claim for drawback; and
> (7) the refusal to reliquidate an entry under section 1520(c) of this title".

Section 520(c)(1), Tariff Act of 1930, as amended, *supra* (19 U.S.C. 1520(c)(1)), provides for reliquidation of an entry to correct [2]—

> "(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction; * * *".

Section 515(a), Tariff Act of 1930, as amended, *supra* (19 U.S.C. 1515(a)), provides that—

> "(a) Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the

[2] Prior to the 1970 amendment, section 520(c)(1) stated the same grounds for reliquidation of an entry. The major changes effected by Pub. L. 91-271 were the substitution of the numbers "ninety" and "nine" for "sixty" and "ten," respectively.

appropriate customs officer, within two years from the date a protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 1514 of this title, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two year limitation prescribed in the first sentence of this subsection. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary."

Section 2631(a) of title 28, Unites States Code, as amended by the Customs Courts Act of 1970, prescribes that an action on a protest denied pursuant to section 515(a) is barred unless brought in this court within 180 days after the date of mailing of the notice of denial. Section 2632(a) of title 28, as amended, *supra*, requires that the action be commenced by filing a summons in accordance with the rules of this court.[3]

In essence, the defendant contends that as to these two entries, the court lacks jurisdiction over the action, since it has not been c mmenced by the timely filing of a summons within 180 days from the date of mailing of the notices of denial, as required by sections 2631(a) and 2632(a), *supra*.

It maintains that plaintiff's valid "old-law" letter protests of September 1970 had been denied by the Bureau of Customs letters of May 5, 1971. Under its view the May 5, 1971 letters constituted section 515(a) notices of denial, which commenced the running of the 180-day period of limitations within which to file a summons.

The defendant also urges that plaintiff's protest of August 3, 1971 does not meet the requirements of section 514, as amended, in that it is not directed against a protestable administrative decision, but is based merely on the "denial of a protest." Furthermore, defendant asserts that it was not filed within 90 days from the liquidation.

[3] Sections 2631(a) and 2632(a), as amended by Pub. L. 91-271, read in pertinent part as follows:

"§ 2631. Time for commencement of action.

(a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:

(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *".

"§ 2632. Customs Court procedure and fees.

(a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court."

Prior to October 1, 1970, there were no provisions for mailing of a notice of denial of a protest or filing of a summons. If the protest was disallowed, the appropriate customs officer was required by sec. 515, Tariff Act of 1930 (19 U.S.C. 1515), to transmit the protest, entry and related papers directly to this court "for due assignment and determination."

Plaintiff maintains that the agency letters were not section 515(a) notices of denial of the protests, but rather, were notices of denial of what the customs officials had construed to be requests for reliquidation of the entries under section 520(c)(1), and which, as plaintiff was advised, could be protested "by filing a protest * * * in accordance with Section 1514(a)(7), Title 19, United States Code." Inasmuch as 19 U.S.C. 1514(a)(7) cites the refusal to reliquidate an entry under section 520(c) as a protestable ground, plaintiff contends that: 1) the customs authorities has issued protestable administrative decisions; 2) the subsequent timely protest filed on August 3, 1971 was denied on August 27, 1971 by notice given in accordance with section 515(a); and 3) the summons, which was filed within 180 days thereafter, properly invoked the jurisdiction of this court.

At the oral argument on this motion, plaintiff raised a new jurisdictional issue. Plaintiff claims, alternatively, that the original protests are still pending since they were never validly denied pursuant to section 515(a). Consequently, plaintiff contends that the subsequent documents filed herein, commencing with the letters of May 5, 1971 are mere surplusage, and that, as to the two entries, the action should be dismissed on the ground that the summons was prematurely filed.

Although various claims have been advanced, the parties agree that the crucial question is whether the letters of May 5, 1971 constituted notices of denial within the meaning of sections 515(a) and 2631(a) so as to commence the running of the 180-day period of limitations within which to invoke the jurisdiction of this court by filing a summons.

The letters have been carefully examined to ascertain their meaning and import. Their meaning has been determined from the words used, and what the letters actually stated. This test of ascertaining meaning is based upon the expressed or manifest intent of the author.

From the specific language used, the court finds that only one conclusion can be drawn. The letters unequivocally advised plaintiff that the officials in the Bureau of Customs had reviewed the classification in the light of plaintiff's claim, and that they adhered to their original action. This information conveyed to plaintiff is clear and unambiguous.

The letter was equally clear as to the action or procedure that the plaintiff was to follow if it wished to protest that "decision." The prescribed action was specifically set forth as follows:

> "However, this decision may be protested by the importer [i.e. plaintiff] or his authorized agent within 90 days after the date of this letter by filing a protest on Customs Form 19 in quadruplicate in accordance with Section 1514(a)(7), Title 19, United States Code."

It is conceded that plaintiff complied fully with the procedure prescribed by the customs officials. Counsel for the defendant cannot now urge that plaintiff should not have followed the procedure indicated, or that it should have known that it was incorrect, improper or inadvertently suggested. Exculpatory explanations cannot be asserted against a party who, in justifiable reliance upon instructions received from an authoritative source, has changed his position to his detriment. To fail to apply this standard of conduct to the defendant would fall far short of the moral norm enunciated by President Lincoln who, in his second inaugural message, stated:

> "It is as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals."

Justice, in this case, requires a solution that will neither penalize nor prejudice a plaintiff who complied in good faith with the instructions given by the customs officials.

It is evident that the Bureau of Customs had not treated plaintiff's "old-law" letter protests as protests against the classification of the merchandise within the purview of section 514, Tariff Act of 1930, which indeed they were. Rather, they were treated as section 520(c)(1) requests to reliquidate the entries to correct a "clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law * * *." Inasmuch as the agency had made an administrative determination as to something which did not exist, namely, requests for reliquidation under section 520(c)(1), plaintiff's original protests were never acted upon. Therefore, they have neither been allowed nor disallowed as required by section 515(a).

In view of the foregoing, the administrative responses of May 5, 1971 were not effective notices of denial of plaintiff's protests within the meaning of sections 515(a) and 2631(a), as amended, *supra*. Consequently, the running of the 180-day period for the filing of a summons did not commence.

Since the "old-law" protests of September 1970 are still outstanding, the so-called "protest" of August 3, 1971 and the notice of denial thereof, issued on August 27, 1971, serve no valid purpose or function as required by Public Law 91–271. As plaintiff suggests, they are mere "surplusage."

In the absence of a valid denial of the original protests in accordance with section 515(a), the summons was prematurely filed and the court, for this reason, lacks jurisdiction over the action with respect to entries 141274 and 543524.

The motion for rehearing is denied and the order of October 11, 1974 is hereby amended in accordance with this opinion.[4]

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[4] In light of the court's finding, defendant's claim as to the proper party-plaintiff in connection with entry 543524, and the reference thereto in the order entered October 11, 1974, are mooted.

(C.R.D. 75-5)

L. B. WATSON CO., A/C MURPHY REIR, INC. *v.* UNITED STATES

On Plaintiff's Motion for Summary Judgment

Court No. 67/9660

Toys—Inflatable vinyl reindeer and Santa Claus figures and sets

Port of Los Angeles

[Motion denied.]

(Dated September 23, 1975)

Stein & Shostak (*Martin H. Wegman* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

MALETZ, Judge: This case—which comes before the court on a second motion by plaintiff for summary judgment—involves the dutiable status of articles described on the invoices as VNC 200 (Randy Reindeer), VNC 301 (Standing Santa 24"), and MR 33 (26" Roly Poly Santa). The articles were classified by customs under item 737.40 of the tariff schedules as other toy figures of animate objects (except dolls), not having a spring mechanism, not stuffed, and not wholly or almost wholly of metal, and assessed with duty at the rate of 35 percent.

Plaintiff claims that the importations are properly classifiable under item 772.97 as other Christmas ornaments of rubber or plastics and thus dutiable at the rate of 17 percent. In support of its claim, plaintiff contends that the merchandise in issue is similar in all material respects to the merchandise in issue in *Davis Products, Inc., Frank M. Chichester* v. *United States*, 59 Cust. Ct. 226, C.D. 3127 (1967). In that case, certain inflatable vinyl reindeer and Santa Claus sets were classified by the government under paragraph 1513 of the Tariff Act of 1930, as modified, as other toys not specially provided for, and assessed with duty at the rate of 35 percent. The court held, however, that as claimed by plaintiffs, the importations were primarily marketed, sold and used as articles of Christmas display and not as toys, and were therefore properly classifiable by similitude to manufactures of rubber under paragraph 1537(b) of the 1930 Tariff Act, as modified, and thus dutiable at the rate of 12½ percent.

Against this background, the single issue here—as in plaintiff's first motion for summary judgment—is whether or not the imported

articles involved in the present case are similar in all material respects to the inflatable vinyl reindeer and Santa Claus sets involved in the *Davis* case.

As to this, it is to be noted that no sample of any of the importations in question has been offered by plaintiff to support either this or the prior motion. Instead, plaintiff here relies *in toto* upon an affidavit of one Sidney L. Friedlander to supplement a previous affidavit by Mr. Friedlander that was the sole basis for plaintiff's first motion for summary judgment. It is to be added that this first motion was denied by the court on April 7, 1975 in a memorandum opinion and order, 74 Cust. Ct. 193, C.R.D. 75–2, holding thatMr. Friedlander's affidavit was insufficient to prove the necessary similarity. More specifically, Friedlander's previous affidavit, in support of plaintiff's first motion for summary judgment, was to the following effect (74 Cust. Ct. at 194):

1. That he is the same Sidney L. Friedlander who testified in the *Davis* case, *supra*;
2. That he is personally familiar with the Christmas inflatable articles selected, purchased and sold by Davis Products, and that he is likewise familiar with the articles involved in the present case;
3. That the articles at issue in this case "are similar in construction and use to the items previously imported by Davis Products, Inc." which were before the court in the *Davis* case.

As the basis for its decision on the first motion, the court stated (*id.* at 194) that —

> * * * [W]hile it is not necessary for plaintiff to offer a sample of the imported merchandise, it must, however, present adequate evidence to establish the nature and essential characteristics of the importation. *New York Merchandise Co., Inc.* v. *United States*, 66 Cust. Ct. 69, C.D. 4169 (1971); *W. T. Grant Co.* v. *United States*, 74 Cust. Ct. 3, C.D. 4579 (1975). On this aspect, plaintiff relies upon the statement in the Friedlander affidavit that the articles in issue in this case "are similar in construction and use to the items previously imported by Davis Products, Inc. * * *." This statement, however, provides no factual information which would enable the court to determine the essential characteristics of the imported merchandise. Simply stated, plaintiff has provided no information concerning the particular qualities of the importations which are necessary for determination of this action. In sum, the court is totally uninformed about the imported merchandise lacking as it does such necessary information as the appearance and expression of the figures, the existence or nonexistence of fastening tabs, the gauge of the vinyl, etc. See *Davis Products, Inc., Frank M. Chichester* v. *United States*, *supra*, 59 Cust. Ct. at 228–9; *New York Merchandise Co., Inc.* v. *United States*, *supra*, 66 Cust. Ct. at 74–7.

In support of the present motion, plaintiff has submitted a supplemental memorandum by Mr. Friedlander which reads in part:

> That, like the Davis Products, Inc. Christmas decorations, the inflatable vinyl Christmas decorations imported by Murphy Reir, Inc. * * *.
>
> 1) were made of 10-gauge vinyl, rather than the 8-gauge vinyl usually used in toy items;
> 2) were made of vinyl having a lower temperature formulation to withstand cold weather;
> 3) had realistic expressions and proportions;
> 4) contained fastening tabs as integral features to enable them to be fastened in place on the ground, floor or roof tops;
> 5) lacked the cartoon and noise-making features usually found in toys.

As indicated previously, no sample has been offered by plaintiff in support of its motion. Nor has plaintiff offered a catalogue description or other identifying document. Further, it is significant that Mr. Friedlander's present affidavit is devoid of any demonstrative evidence as to what the imported merchandise really looks like. For example, while Mr. Friedlander attests that the imported merchandise "had realistic expressions and proportions," it is interesting to compare this essentially subjective assertion of "realism" with the invoice description of the imported merchandise, viz. "Randy Reindeer" and "Roly Poly Santa." By the same token, Mr. Friedlander's assertion that the Randy Reindeer and the Roly Poly Santa lacked cartoon features usually found in toys is not only an essentially subjective characterization, it seems somewhat inconsistent with the invoice descriptions themselves.

In sum, considering that there is no sample, no descriptive literature and that much of Friedlander's affidavit is of a conclusory nature, the court is uninformed about the nature and essential characteristics of the importations. Hence it must be concluded that a genuine issue exists for trial, namely, the identity of the importations in question.

For the foregoing reasons, plaintiff's second motion for summary judgment is hereby denied with prejudice.

(C.R.D. 75-6)

HANCOCK GROSS MFG., INC. *v.* UNITED STATES

OPINION AND ORDER ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S CROSS-MOTION TO CORRECT ITS NAME

Court Nos. 65/2629 and 69/14620

Port of Philadelphia

[Motion to dismiss denied; cross-motion to correct name of plaintiff granted.]

(Dated September 29, 1975)

Allerton deC. Tompkins for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John J. Mahon*, trial attorney), for the defendant.

NEWMAN, Judge: Pursuant to rule 4.7(b)(1) of this court defendant has moved to dismiss these two protests on the ground that plaintiff is not a proper party and has no standing to file the actions. In response to defendant's motion, plaintiff has filed an opposition, and a cross-motion to change the plaintiff-corporate name in these cases from Hancock Gross Mfg., Inc. to Hancock-Gross, Inc. Defendant has opposed the cross-motion.

It is abundantly clear that defendant's motion should be denied, and plaintiff's cross-motion should be granted.

1.

Briefly, the pertinent facts are:

The subject merchandise (plumbing supplies) was imported through the port of Philadelphia in 1964. Entries were filed by Davies, Turner & Co., a Philadelphia customhouse broker, for the account of Hancock Gross Mfg., Inc. (Hancock-Gross), plaintiff herein. The consumption entry forms (Customs Form 7501) declare that:

> * * * I [Davies, Turner & Co.] am the ☒ nominal consignee and that the actual owner for customs purposes is as shown above [Hancock Gross Mfg., Inc.] * * *.

Further, the commercial and special customs invoices show that Hancock-Gross was the actual purchaser of the merchandise. However, the "Carrier's Certificate and Release Order" (Customs Form 7529) in each entry certifies "that DAVIES, TURNER & Co. of PHILADELPHIA, PENNA. is the owner or consignee of such articles within the

purview of section 484(h), Tariff Act of 1930." Additionally, no owner's declaration or superseding bond was filed by Davies, Turner pursuant to 19 U.S.C. § 1485(d) (1964) and 19 CFR § 8.18(d) (1964).*

Protest No. 65/2629 was signed by plaintiff's counsel on behalf of Hancock Gross Mfg., Inc. and Davies, Turner & Co. as follows:

Respectfully, HANCOCK GROSS MFG., INC.

(DAVIES, TURNER & CO.)

BY:

Allerton deC. Tompkins, Attorney
44 Whitehall Street,
New York, N.Y. 10004

Protest No. 69/14620 was similarly signed by plaintiff's counsel on behalf of both Hancock Gross Mfg., Inc. and Davies, Turner & Co. However, at the time of making the entries and filing the protests plaintiff's correct corporate name was Hancock-Gross, Incorporated, pursuant to an amendment of its corporate name on June 28, 1961.

2.

The Government urges that the protests be dismissed for lack of jurisdiction on the ground that the entries were made by Davies, Turner & Co., the importer of record, while the protests were filed by Hancock Gross Mfg., Inc., which party was neither the "importer" nor the "consignee" for tariff purposes. In support of its position, defendant cites: *Wilmington Shipping Company* v. *United States*, 52 Cust. Ct. 650, A.R.D. 175 (1964), *aff'd*, 52 CCPA 76, C.A.D. 861 (1965); and *Top Form Brassiere Mfg. Co., Ltd.* v. *United States*, 68 Cust. Ct. 288, R.D. 11770 (1972).

Defendant also attempts to buttress its motion by attaching certified copies of the "Articles of Amendment" filed with the De-

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* 19 U.S.C. § 1485(d) (1964) reads as follows:

(d) A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee.

19 CFR § 8.18(d) (1964) provides:

(d) A consignee in whose name an entry is made who desires under the provisions of section 485(d), Tariff Act of 1930, to be relieved from direct liability for the payment of increased and additional duties shall file a declaration of the actual owner of the merchandise on customs Form 3347. If the consignee desires to be relieved also from the liability for the payment of such duties voluntarily assumed by him in the single-entry bond which he filed in connection with the entry or in his term bond against which the entry was charged, he shall file with the collector of customs within 90 days from the date of entry a superseding bond on customs Form 7601 of the actual owner whose declaration on customs Form 3347 has been filed in accordance with section 485(d) and the regulations in this part. The filing of the owner's declaration and of the superseding bond by the nominal consignee is optional and no bond shall be required for the production of either. Neither the owner's declaration nor the superseding bond shall be accepted unless filed by the nominal consignee or his duly authorized agent. * * *

partment of State in Pennsylvania and the "Certificate of Amendment" dated June 28, 1961 issued by the State of Pennsylvania changing the corporate name of plaintiff from Hancock Gross Manufacturing, Inc. to Hancock-Gross, Incorporated.

Plaintiff argues that it has standing to file these protests as the actual owner and importer of the merchandise, citing: *United States* v. *Waterbury Lock & Specialty Co.*, 35 CCPA 131, C.A.D. 384 (1948); *Adolco Trading Co.* v. *United States*, 71 Cust. Ct. 145, C.D. 4487 (1973); *Air Carrier Supply Corporation* v. *United States*, 35 Cust. Ct. 173, C.D. 1740 (1955), *aff'd*, 44 CCPA 116, C.A.D. 647 (1957); *Great Lakes Foundry Sand Co.* v. *United States*, 15 Cust. Ct. 256, Abs. 50442 (1945), *appeal dismissed*, 33 CCPA 190 (1945).

Plaintiff also contends that Hancock Gross Mfg., Inc. is the same corporation as Hancock-Gross, Inc., and that the corporation merely changed its name. In support of its cross-motion to correct its name in these protests, plaintiff has submitted the identical "Articles of Amendment" and "Certificate of Amendment" relied upon by defendant in its motion to dismiss.

3.

Under section 514 of the Tariff Act of 1930, the party filing a protest must be "the importer, consignee, or agent of the person paying such charge or exaction". Fundamentally, of course, the court lacks jurisdiction over a protest filed by a party which does not fall within one of the authorized classes of persons specified in section 514. *Shigoto International Corp.* v. *United States*, 66 Cust. Ct. 252, C.D. 4199 (1971). And protests which are a nullity cannot be amended. *Heemsoth Kerner Corporation* v. *United States*, 31 Cust. Ct. 113, C.D. 1554 (1953).

In the decisions relied upon by plaintiff, cited *supra*, the courts have recognized the purchaser and actual owner of the importations as a party authorized to file protests. In this connection, the following observations by Judge Miller of our appellate court, concurring in the very recent decision of *United States* v. *Wedemann & Godknecht, Inc.*, 62 CCPA 86, C.A.D. 1151, 515 F.2d 1145 (1975), are apposite here:

> The courts have consistently permitted the owner-importer of the merchandise or his agent to protest the decision of the collector, even though such owner-importer or agent (or both) was not so identified in the entry papers, upon proof of identity at the trial. See *United States* v. *Hannevig*, 10 Ct. Cust. App. 124, T.D. 38384 (1920); *Adolco Trading Co.* v. *United States*, 71 Cust. Ct. 145, C.D. 4487 (1973); *Great Lakes Foundry Sand Co.* v. *United States*, 15 Cust. Ct. 256, Abs. 50442 (1945); *Bernstein*

v. *United States*, 59 Treas. Dec. 870, T.D. 44800 (Cust. Ct. 1931); *Davies, Turner & Co.* v. *United States*, 58 Treas. Dec. 1216, Abs. 14407 (Cust. Ct. 1930); *Gray* v. *Lawrence*, 10 F. Cas. 1031 (No. 5,722) (C.C.S.D.N.Y. 1853). The import of these decisions is that, for purposes of section 514, a protest may be filed by one who proves that he is the real party in interest or his agent. Thus, in *Bernstein*, supra, the concurring opinion quoted the following portion of Chief Justice Taney's opinion in *Mason* v. *Kane*, 16 F. Cas. 1044 (No. 9,241) (C.C.D.Md. 1851):

> We see no inconvenience that can arise to the collector, or the public, by permitting the owner to maintain the suit in his own name, instead of suing in the name of his agent or consignee; the payment by the consignee, is the payment by the principal; and the protest of the consignee, the protest of the principal, if he thinks proper to adopt it. We think the practice in some of the circuits has sanctioned suits by the foreign owner, in cases of this description; and as this practice is consistent with a fair construction of the act of 1845, and no injustice or inconvenience can arise from it, the court are of opinion, that this objection must be overruled.

But *cf. Baylis Brothers Co., etc.* v. *United States*, 75 Cust. Ct. 89, C.D. 4611 (1975).

Here, defendant has not attempted to distinguish any of the precedents relied upon by plaintiff, but merely "suggests" (in a footnote) that *Adolco Trading Co.* "is not dispositive of the issue herein". Moreover, *Wilmington Shipping Company* and *Top Form Brassiere Mfg. Co., Ltd.*, relied on by defendant, are reappraisement cases arising under 19 U.S.C. § 1501, and therefore are not deemed controlling in the present protest cases involving section 1514. Furthermore, it may be noted that in *Control Data Corporation* v. *United States*, 61 CCPA 109, C.A.D. 1132, 499 F. 2d 1304 (1974), jurisdiction under section 1501 was upheld in certain appeals for reappraisement notwithstanding that the appeals were not filed by the consignee (Norman G. Jensen, Inc.), but rather by the actual owner of the goods (Control Data Corporation). In *Control Data*, the jurisdictional issue was raised *sua sponte* by Judge Richardson relying upon, *inter alia*, *Wilmington Shipping*. See *United States* v. *Control Data Corporation*, 69 Cust. Ct. 274, A.R.D. 310, 352 F. Supp. 1392 (1972).

In any event, the significant fact remains that the protests were signed by plaintiff's attorney on behalf of Davies, Turner, as well as Hancock-Gross, and consequently the protests must be considered as filed by both the nominal and ultimate consignees. Plainly, then, there is no basis under rule 4.7(b)(1) for dismissal of these protests.

Hence, the caption of these cases hereafter shall include Davies, Turner & Co. as a party-plaintiff.

4.

Finally, defendant's contention that the court lacks jurisdiction of the protests because they were filed by Hancock Gross Mfg., Inc. rather than Hancock-Gross, Inc., is without merit. There has been no showing that the different names refer to two different and separate companies. Instead, it is undisputed that Hancock Gross Mfg., Inc. merely amended its name, and is one and the same corporate party as Hancock-Gross, Inc. By contrast, in *Shigoto International Corp.*, Judge Maletz held that the protests were jurisdictionally defective where the importer, Shigoto Industries, Ltd., and the protestant, Shigoto International Corp., were shown by testimony to be entirely different companies.

While the carelessness displayed here respecting the proper naming of a corporate party in the protests is not "condoned", nevertheless I feel strongly that such technical error is properly amenable to correction. Thus, in *Wedemann & Godknecht, Inc.* Judge Rich, writing for the majority of our appellate court, very recently expressed the principle that section 514 was to be "liberally construed in furtherance of justice", and so far as pertinent here, also commented as follows (62 CCPA at 92):

> We do not mean by this opinion to condone slipshod performance by the customs bar in complying with the tariff statutes. If, as the Government would have us believe, filing of protests in the name of the wrong party is becoming a problem, we hope that the excessive litigation which has resulted from what was done in this case will be taken as a lesson. But we think the penalty should fit the crime and that FFB [Farbenfabriken Bayer, A.G.] should not have to foot the bill for improving professionalism in the customs bar and among brokers.

5.

For the reasons stated herein, it is hereby ORDERED:

1. Defendant's motion to dismiss is denied.

2. Plaintiff's motion to change the name of the captioned plaintiff from Hancock Gross Mfg., Inc. to Hancock-Gross, Inc. is granted.

3. Hereafter, the caption of these cases shall include Davies, Turner & Co. as a party-plaintiff.

4. Defendant shall serve its answers to the complaints in these protests within thirty days after service by the clerk of a copy of this opinion and order.

(C.R.D. 75-7)

E. R. SQUIBB & SONS, INC. v. UNITED STATES

On Cross-Motions for Summary Judgment

Court No. 73-9-02547

Port of New York

[Cross-motions denied, without prejudice.]

(Dated October 20, 1975)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Jerry P. Wiskin*, trial attorney), for the defendant.

NEWMAN, Judge: Plaintiff has moved for summary judgment pursuant to rule 8.2 of this court; and defendant has cross-moved for summary judgment pursuant to said rule. The parties have agreed that there is no genuine issue as to any material fact.

For the reasons set forth herein the cross-motions are denied, but without prejudice.

The merchandise in issue is described on the invoice as "Broxodent devices (electric toothbrushes), 110 V/60 Hz, Model D-11". These articles were imported from Switzerland at the port of New York in 1970, and were assessed with duty by the regional commissioner at the rate of 0.56¢ each, plus 11.5 per centum ad valorem under the provision for "Tooth brushes" in item 750.40 of the Tariff Schedules of the United States, as modified by T.D. 68-9.

Plaintiff claims that the importation should have been assessed with duty at the rate of 8 per centum ad valorem pursuant to the provision in item 688.40, TSUS, as modified by T.D. 68-9, for "Electrical articles, and electrical parts of articles, not specially provided for".

In its complaint, plaintiff also alternatively claims under the provision in item 683.32 for electro-mechanical appliances, which were dutiable at the rate of 8 per centum ad valorem. However, in its brief plaintiff receded from that claim, and requested reliquidation only under item 688.40. In these circumstances, the claim under item 683.32 is deemed abandoned.

The pertinent provisions of the tariff schedules are as follows:

Classified under:		
Schedule 7, Part 8, Subpart A:		
	Other brooms and brushes:	
750.40	Tooth brushes	0.56¢ each +11.5% ad val.[1]
Claimed under:		
Schedule 6, Part 5:		
688.40	Electrical articles, and electrical parts of articles, not specially provided for	8% ad val.[1]

The motion papers disclose the following undisputed facts:

The imported article is a power unit for plaintiff's "Broxodent" electric toothbrush. Such power unit consists of a case containing an electric motor, an electric cord, a switch for turning the motor on and off, and a component designed to hold a brush. However, brushes were not included in the importation. The brush portion of the Broxodent electric toothbrush is not permanently affixed to the power unit, but rather is replaceable and interchangeable with other brushes designed to be affixed to the power unit. The brush component comprises approximately one percent of the value of the entire Broxodent electric toothbrush, and may be purchased at retail separately from the power unit.

Defendant contends that the power units, without brushes, are "unfinished" toothbrushes, and thus were properly classified under item 750.40 pursuant to General Interpretative Rule 10(h).[2]

Plaintiff, on the other hand, argues that the power units alone cannot be classified as "unfinished" toothbrushes pursuant to rule 10(h) because the brush components (which were not included in the importation) are essential parts of complete Broxodent electric toothbrushes. Further, plaintiff urges that the power units are merely "parts" of electric toothbrushes, which are not covered by item 750.40,[3] and such parts (which are concededly electrical) are properly classifiable under item 688.40.

Defendant disputes that the absent brushes are essential parts of complete electric toothbrushes and characterizes the brush components as "at best, *de minimis*" and as "mere accessories". Hence,

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[1] Rates of duty modified by Presidential Proclamation 3822, 82 Stat. 1455, effective during calendar year 1970.

[2] General Interpretative Rule 10(h) provides: "(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished".

[3] Item 750.40 contains no provision for "parts" of toothbrushes.

defendant's position is that the power units alone are substantially complete (viz., unfinished) electric toothbrushes. Additionally, defendant insists that the power units are "machines" or "parts of a particular machine or apparatus", and therefore are excluded from item 688.40 by virtue of the legislative intent expressed in the explanatory notes in the *Tariff Classification Study* (November 15, 1960), schedule 6, page 308.

Preliminary to consideration of the issues, it should be pointed out by way of background that the classification of *complete* electric toothbrushes has been before the court in two prior cases: *Kaysons Import Corp.* v. *United States*, 56 Cust. Ct. 146, C.D. 2622 (1966); and *Thalson Co.* v. *United States*, 64 Cust. Ct. 418, C.D. 4011 (1970). But neither holding is controlling.

In *Kaysons Import Corp.*, electric toothbrushes were held to be properly classified by the Government under the provision in paragraph 1506 of the Tariff Act of 1930, as modified, for toothbrushes, as against plaintiff's claim that they were properly dutiable under paragraph 353, as modified, as articles having as an essential feature an electrical element or device.

In *Thalson Co.*, electric toothbrushes imported in 1963 were held to be properly dutiable under item 683.32, TSUS as electro-mechanical appliances, with self-contained electric motors, of the type used in the household, rather than under the provision in item 750.40, TSUS for toothbrushes, since at the time of importation (1963) mechanical brushes were expressly excluded from item 750.40 by virtue of headnote 1(i) of schedule 7, part 8, subpart A. The court held that the 1965 amendment of headnote 1(i) by section 77 of Public Law 89-241, 79 Stat. 933 (Tariff Schedules Technical Amendments Act of 1965), which included electric toothbrushes within the scope of item 750.40, had no retroactive effect respecting the 1963 importation.

It is, of course, fundamental that plaintiff has the burden of establishing not only that the Government's classification is erroneous, but also of establishing that the claimed classification is correct. *United States* v. *L. Batlin & Son, Inc.*, 61 CCPA 17, C.A.D. 1111, 487 F. 2d 916 (1973); *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970). However, I am unable to agree with defendant's contention that plaintiff has the burden of negating the possible applicability of tariff provisions other than item 750.40 merely because item 688.40 contains a "not specially provided for" clause. In *Pacific Fast Mail* v. *United States*, 68 Cust. Ct. 41, 49, C.D. 4333, 338 F. Supp. 506 (1972), the court rejected a similar contention by defendant, holding that where the plaintiff has presented a prima facie showing that the Government's classification is erroneous and the claim of the protest is correct, the defendant is charged with the burden of going forward with proof to negate plaintiff's case, either

by showing that plaintiff's proof is insufficient or by proving that a more appropriate alternative provision is applicable. And *cf. L. Batlin & Son, Inc., supra.*

Accordingly, if the Government's classification in this case is proven erroneous, and if plaintiff establishes the applicability of the claimed provision, the burden of proof shifts to defendant to affirmatively establish the propriety of any asserted alternative classification. However, defendant has not asserted any alternative classification in its answer. Consequently, there is no issue concerning any alternative classification before the court.

Since defendant's reliance on rule 10(h) appears to be the pivotal issue respecting the classification, we now consider that aspect of the case. In this connection both parties discuss *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973), which appears pertinent here.

In *Authentic Furniture*, a majority of the appellate court applied the "substantially complete" test in holding that an importation of unassembled pieces for wooden bunk beds, which did not include side-rails, was properly dutiable as parts of furniture under item 727.40, TSUS, as modified, rather than as unfinished furniture under item 727.35, as modified, pursuant to rule 10(h). Chief Judge Markey, writing for the majority of the appellate court stated (61 CCPA at 6): "We find no error in the lower court's holding that parts of an article may be classified as the unfinished article itself only when the imported pieces constitute a substantially complete article, albeit in unassembled condition". The majority of the appellate court considered the side-rails to be an essential part of a useable bunk bed, and ruled that "the absence of a substantial or essential part precludes classification as the unfinished article itself" (61 CCPA at 7).

The so-called "dedication to use" test, relied upon by defendant in the present case, was expressly eschewed in the majority's opinion in *Authentic Furniture*, since such test "has been employed only to distinguish, in the sense of the tariff schedules, the status of an unfinished article from the material of manufacture" and "makes no distinction whatsoever between the unfinished article and parts thereof" (61 CCPA at 7).

Following the rationale of *Authentic Furniture*, the issue here relating to rule 10(h) is whether the absent brushes are essential parts of Broxodent electric toothbrushes, as claimed by plaintiff, or "mere accessories", as contended by defendant. This issue should be decided on a factual background which, at present, is insufficiently presented by these cross-motions. Neither a sample of the article in issue nor even a pictorial representation thereof has been submitted to the court. Moreover, the court is presently uninformed as to the facts concerning whether the imports were marketed in the trade and commerce of the

United States as substantially complete toothbrushes, or whether the power units alone are commonly known as toothbrushes or parts of toothbrushes. Plainly, under the rationale of *Authentic Furniture*, the mere disparate value relationship between the power unit and the brush is not a conclusive test as to whether the brush is an essential part or mere accessory of the Broxodent devices, for purposes of rule 10(h). In sum, it is far from clear at this time that the power unit alone "possesses the shape, size, and all of the necessary characteristics of an electric toothbrush" and is "clearly identifiable in its unfinished state as the thing it would be when finished", as claimed by defendant.

Turning now to plaintiff's claim under item 688.40, I must agree with defendant's contention that classification under the claimed provision is ruled out if the power units are "machines" or "parts of apparticular machine or apparatus".

Headnote 1(v) of part 5, schedule 6 reads:

1. This part does not cover—

* * * * * * *

(v) washing machines, ironing machines, sewing machines, and other machines provided for in parts 4 or 6 of this schedule; * * *

Significantly too, the *Tariff Classification Study* (November 15, 1960), schedule 6, page 308, contains the following explanatory note about item 688.40:

> Item 688.40 is the "basket" provision in part 5 for "electrical articles, and electrical parts of articles,". This item does not apply to any article classifiable as a machine and the provision for electrical parts of articles applies to articles identifiable as parts of machinery or apparatus but not as parts of a particular machine or apparatus.

Defendant contends correctly that "plaintiff has failed to show that there exists no triable issue of fact herein with regard to its claim". Plaintiff does not dispute that, as a matter of law, the imports are excluded from item 688.40 if they are "machines" or "parts of a particular machine or apparatus", but on the contrary, argues that "[t]he Government has made no attempt to adduce facts in which the Court can find that the imports or complete electric toothbrushes are machines".

While ultimately the issues relating to the applicability of item 688.40 are questions of law, nevertheless there must exist a factual basis for determination of such questions. In short, while the power units are indisputably electrical articles, the court is unable at this juncture to make the necessary factual determinations from the statements under rule 8.2(b) regarding whether the imports are machines or parts of a particular machine. Therefore, it is apparent that there exists a triable issue of fact relating to plaintiff's claim, as well as to the Government's classification.

As aptly stated by Judge Maletz in *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.* v. *United States*, 68 Cust. Ct. 377, 379, C.R.D. 72-11, 343 F. Supp. 1387 (1972):

> Where there are cross-motions, the court is under no duty to grant judgment merely because both parties ask for it or are under the belief that there are no factual issues to be tried. [Citations omitted.]

and again at pages 383-384:

> The court, however, is not clairvoyant and will not decide a question of law which turns upon facts that are not of record. A case cannot be precluded from trial simply because "[t]he lawyers for the respective parties, by the cross-motions, superinduced the idea that no factual questions were involved." [Citation omitted.]

To summarize, the unresolved factual issues requiring amplification, without detailing the necessary proofs, are:

1. Whether the brushes (not included in the importation) are essential parts or mere accessories of the power units.

2. Whether the power units are machines or parts of a particular machine or apparatus.

In *Weather-Rite Sportswear Co., Inc.* v. *United States*, 62 Cust. Ct. 373, C.D. 3774, 298 F. Supp. 508 (1969), the undersigned, writing for the First Division, urged the vital necessity for incorporating the desirable procedural remedy of summary judgment in our court rules. There, we cited Mr. Justice Stone's memorable address on "The Common Law of the United States," [4] wherein he discussed innovations and his disfavor with an attitude of narrow literalism. Mr. Justice Stone observed:

> A statute [or rule] is not an alien intruder in the house of the common law, but a guest to be welcomed and made at home there as a new and powerful aid in the accomplishment of its appointed task of accommodating the law to [vital] needs.

Happily, the Customs Court adopted rule 8.2 in 1970, authorizing summary judgment, and the writer stands ready to utilize this constructive procedural tool in appropriate situations—thereby reaching a prompt disposition, and obviating the delay and expense incidental to a trial where there are no real issues of material facts. The court, however, must proceed from the secure hypothesis that there are no justiciable questions of fact. Here, the parties have not yet definitively spelled out the requisite facts at this point. Accordingly, the court is constrained, with the utmost reluctance, to deny the cross-motions, albeit without prejudice to whatever proceedings the parties may wish to pursue.

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[4] *The Future of the Common Law*, Harvard U. Press, pp. 120, 133-4.

(C.R.D. 75–8)

INTERNATIONAL ELECTRONICS CORP. *v.* UNITED STATES

Memorandum and Order

Court No. 71–10–01413

(Dated November 25, 1975)

Mandel & Grunfeld for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Jerry P. Wiskin*, trial attorney), for the defendant.

WATSON Judge: The clerk of the court, acting under rule 17.1, refused to file defendant's motion to strike plaintiff's notice of trial on the ground that rule 9.1 provides only for an objection to a notice of trial in the form prescribed therein.

As I read rule 9.1, it does not adequately provide for objections to a notice of trial which go beyond disagreement as to the date or place of trial. Since defendant's objection here is primarily that the notice of trial is a sham designed to circumvent a previous order of the court and avoid dismissal for lack of prosecution, I am of the opinion that a motion to strike is a proper vehicle. It allows plaintiff to respond in defense of its notice of trial, leads directly to a full resolution of the issue involved and, in accordance with rule 1.1(b), I consider it to be the correct procedure in these circumstances.

It is therefore,

ORDERED that the clerk of the court file defendant's motion of November 18, 1975 to strike plaintiff's notice of trial.

(C.R.D. 75-8)

INTERNATIONAL ELECTRONICS CORP. v. UNITED STATES

Memorandum and Order

Court No. 74-10-01113

(Dated November 26, 1975)

Wade & Cox, Esq. for the plaintiff.

Rex E. Lee, Assistant Attorney General (Jerry R. Hicks, trial attorney), for the defendant.

WATSON, Judge: The clerk of the court, acting under rule 17.1, refused to file defendant's motion to strike plaintiff's notice of trial on the ground that rule 6.1 provides only for an objection to a notice of trial in the form prescribed therein.

As I read rule 6.1, it does not adequately provide for objections to a notice of trial which go beyond disagreement as to the date or place of trial. Since defendant's objection here is primarily that the notice of trial is a sham designed to circumvent a previous order of the court and avoid dismissal for lack of prosecution, I am of the opinion that a motion to strike is a proper vehicle. It allows plaintiff to respond in defense of its notice of trial, leads directly to a full resolution of the issue involved and, in accordance with rule 17.1(b), I consider it to be the correct procedure in these circumstances.

It is therefore,

ORDERED that the clerk of the court file defendant's motion of November 18, 1975 to strike plaintiff's notice of trial.

203-269—76——14

ABSTRACTS OF CUSTOMS COURT DECISIONS

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/405	Maletz, J. July 3, 1975	Fedtro, Inc.	68/35535	Item 684.70 15%	Item 685.20 9%	Agreed statement of facts	New York Earphones (not headphones) chiefly used with television receivers
P75/406	Re, J. July 3, 1975	Gambles Import Corp.	6/33156	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	San Diego Mattress and pillow covers
P75/407	Maletz, J. July 8, 1975	New York Merchandise Co., Inc.	72-4-00770	Item 700.60 20%	Item 700.55 7%	Agreed statement of facts	San Diego Footwear uppers of which over 90% of exterior surface area is rubber or plastics, not having foxing or foxing like band applied or molded at sole and overlapping upper

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/408	Maletz, J. July 9, 1975	The Florsheim Shoe Co., Div. of Interco., Inc.	72-2-00282	Item 121.30 10% (buffalo leather) Calf upper leather appraised on basis of foreign value at entered unit values in U.S. $, net packed	Item 121.57 7% (buffalo leather) Appraised unit values less 1% cash discount, packed (proper foreign value for calf upper leather)	Florsheim Shoe Company, Division of Interco, Inc. v. U.S. (C.D. 4495) (buffalo leather) Agreed statement of facts (calf upper leather)	Chicago Buffalo leather and calf upper leather
P75/409	Newman, J. July 9, 1975	Arrow Trading Co., Inc.	68/28343, etc.	Item 653.30 19%	Appraisements and liquidations not in accordance with law; protests premature and dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York High-intensity lamps with bulbs; of base metal; not entireties
P75/410	Newman, J. July 9, 1975	J. Gerber & Co., Inc., et al.	68/15642, etc.	Item 653.40 19% (items marked "A" and "B")	Appraisements and liquidations not in accordance with law; protests premature and dismissed; regional commissioner to take appropri-	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High-intensity lamps with bulbs (items marked "A"); electric lamps with bulbs (items marked "B"): not entireties

					ate action (items marked "A" and "B")		
P75/411	Newman, J. July 9, 1975	C. B. Smith Co., Inc.	67/18606, etc.	Item 207.00 16¾%	Item 202.53 5%	C. B. Smith Co. v. U.S. (C.D. 3991)	Los Angeles Hardwood
P75/412	Newman, J. July 9, 1975	Stelber Cycle Corp.	66/26537	Item 732.36 30%	Item 653.40 19%	Agreed statement of facts	New York Bicycle lights
P75/413	Newman, J. July 9, 1975	Reginald W. Winter	68/20665, etc.	Item 654.00 or 653.39 19%	Appraisements and liquidations not in accordance with law and void; protests premature and dismissed; entries returned to district director for administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	Los Angeles Lamps imported with electrical light bulbs (electric filament bulbs or electric fluorescent bulbs); not entireties
P75/414	Watson, J. July 10, 1975	APF Electronics, Inc.	72-4-00792	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Savannah Combination article containing tape player as an important element of combination
P75/415	Watson, J. July 10, 1975	National Silver Company	70/23653	Item 772.06 13.5% plus 16.5¢ per lb.	Item 772.15 13.5%	Dovar Products, Inc. v. U.S. (C.D. 3880)	Los Angeles Plastic snack sets
P75/416	Re, J. July 11, 1975	Thornton Glove Co., Inc.	73-4-00064-S	Item 705.85 15%	Item 735.05 7.5%	Judgment on the pleadings	New York Mittens

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/417	Maletz, J. July 14, 1975	Rene D. Lyon Co., Inc.	66/12566, etc.	Item 737.40 35%	Item 791.19 17%	Agreed statement of facts	New York "Flocked squirrels" (not chiefly used for amusement of children or adults; in c.v. of fur on the skin)
P75/418	Ford, J. July 15, 1975	Great Lakes Wine Company	72-7-01529	Duties and internal revenue taxes assessed on certain merchandise which was not withdrawn from the bonded customs warehouse	District director to reliquidate entry No. W3501 so as to assess duty and internal revenue taxes upon only those amounts of alcoholic beverages actually withdrawn from the bonded customs warehouse and entered for consumption and not upon 16 cases manifested not found, 11 cases empty, and 29 bottles missing	Judgment on the pleadings	Chicago Shortage (alcoholic beverages)

P75/419	Richardson, J. July 15, 1975	F. W. Myers & Co., Inc.	73-9-02502	Item 692.35 5.5%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Port Huron (Detroit) Tractors and parts
P75/420	Watson, J. July 15, 1975	APF Electronics, Inc.	73-6-01433	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Tampa A combination article containing a tape player as an important element of the combination
P75/421	Watson, J. July 15, 1975	D. Arnold Associates et al.	69/3968, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Articles of plastics
P75/422	Watson, J. July 15, 1975	Austen Display, Inc.	69/1196	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers etc.
P75/423	Watson, J. July 15, 1975	George S. Bush & Co.	71-10-01459	Item 748.20 23.5%	Item 774.60 11.5%	Judgment on the pleadings Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial flowers, etc.
P75/424	Watson, J. July 15, 1975	F.C. Co.	67/67425	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/425	Watson, J. July 15, 1975	Volkswagen of America, Inc.	72-1-00001	Item 400.00 7¢ per lb. plus 45%; 6.3¢ per lb. plus 40%; 5.5¢ per lb. plus 36%; 4.9¢ per lb. plus 31%; or 4¢ per lb. plus 27%	Item 405.25 2.8¢ per lb. plus 18%: 2.5¢ per lb. plus 16%; 2.2¢ per lb. plus 14%; 1.9¢ per lb. plus 12.5%; and 1.6¢ per lb. plus 10.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New York, San Francisco, Los Angeles, New Orleans, Boston, Houston, Baltimore, Chicago, Jacksonville (Tampa), Philadelphia, Portland, Oreg., Toledo (Cleveland) Benzenoid alkyd resin paints
P75/426	Newman, J. July 15, 1975	Associated Lerner Shops of America	73-4-00895	Item 700.60 20%	Item 700.55 8.5%	Agreed statement of facts	New York Slippers and/or sandals containing a percentage of mylar
P75/427	Newman, J. July 15, 1975	Jacobson Mfg. Co., Inc.	73-7-01835	Item 657.20 9.5%	Item 646.56 0.1¢ per lb.	Jacobson Mfg. Co., Inc. v. U.S. (Abs. P74/922)	Philadelphia Washered-lock-nuts (pek nuts)

NUMBER DECISION	DATE OF DECISION JUDGE	PLAINTIFF	NO. CONSOL	DESCRIBED Item and Basis for Assessment	HELD Item and Basis for Assessment	BASIS	RECOMMENDATIONS ENTRY AND PORT OF
P75/428	Newman, J. July 15, 1975	Norca Corp.	66/32798, etc.	Item 657.35 15% plus 1.275¢ per lb. (items marked "A", "C" and "E")	No separate values found; appraisements invalid and void; liquidations premature and void; entries returned to regional commissioner for appropriate administrative action (items marked "A" and "C") Item 654.00 10% (items marked "E")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A", "C" and "E")	New York Sink strainers and bases imported together (items marked "A"); laundry tray plugs and rubber stoppers (items marked "C"); not entireties Shower heads (items marked "E")
P75/429	Newman, J. July 18, 1975	Nikko Boeki Hong Kong, Ltd.	73-4-01059	Item 715.29 22.5% plus 5.2¢ ea. (clocks with movements)	Item 720.02 52¢ ea. (movements marked "A")	Agreed statement of facts	New York Clock radios with movements.
P75/430	Ford, J. July 22, 1975	F. W. Myers & Co., Inc.	67/89526	Item 727.55 20%	Item 810.10, 812.10 or 813.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/431	Watson, J. July 22, 1975	APF Electronics, Inc.	72-8-01796	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Miami A combination article containing a tape player as an important element of the combination
P75/432	Watson, J. July 22, 1975	Copy Cats Trading Co. et al.	68/13472, etc.	Item 748.20 28%, 26.5% or 23.5%	Item 774.60 17%, 15% or 11%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/433	Watson, J. July 22, 1975	Electra Radio Corp. et al.	74-6-01642, etc.	Item 685.30 8% or 6.5%	Item 678.50 6% or 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York A combination article containing a tape player as an important element of the combination
P75/434	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36936, etc.	Item 727.55 20% Item 727.33 10.5% Item 380.39 20%	Item 810.16 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.

P75/435	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36937, etc.	Item 727.55 20% Item 727.35 10.5% Item 380.89 20% Item 382.33 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/436	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36940, etc.	Item 727.55 20% Item 727.35 10.5% Item 382.33 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/437	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36944, etc.	Par. 412 10½% Par. 919 20%	Par. 1632 or 1798 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/438	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36945, etc.	Par. 412 10½% Par. 919 20%	Par. 1632 or 1798 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/439	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/36822, etc.	Under various provisions of TSUS depending on nature of article	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/440	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	67/89531, etc.	Item 727.55 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/441	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	68/27036, etc.	Item 727.55 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/442	Ford, J. July 23, 1975	F. W. Myers & Co., Inc.	68/48074	Item 727.55 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/443	Watson, J. July 23, 1975	Reliance Trading Corp. of America et al.	68/68134, etc.	Item 748.20 26.5%	Item 774.60 18%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc., in c.v. of plastic
P75/444	Watson, J. July 23, 1975	Sanyo Electric, Inc.	75-4-00863, etc.	Item 685.30 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Los Angeles A combination article containing a tape player as an important element of the combination

P75/445	Richardson, J. July 24, 1975	General Instrument Corporation	68/6262, etc.	Item 685.60 12.5%, 12% or 11% (capacitors) Item 687.60 12.5%, 11%, 10% or 8.5% (diodes, transistors, rectifiers) Item 685.20 10%, 9%, 8% or 7% (yokes, flybacks) Item 682.10 12.5% (tuners) Item 682.10 or 682.05 12.5% (I.F. transformers) Item 685.20 or 682.10 12.5%, 10% 9%, 8% or 7% (convergence box assemblies) Without allowance under item 807.00	As assessed, *supra*, with cost or value of U.S. components (items marked "B", "C" "D", "E", "J", "K", "M", "N", "P") deductible from full value of imported merchandise pursuant to item 807.00	General Instrument Corporation v. U.S. (C.A.D. 1106 (items marked "B"); C.D. 4470 (items marked "C"); C.A.D. 1062 (items marked "D"); C.D. 4408 (items marked "E"); C.A.D. 1128 (items marked "J"); C.D. 4507 (items marked "K")) Agreed statement of facts (items marked "M", "N", "P")	New York American goods returned; capacitors, diodes, transistors, rectifiers, yokes, flybacks, tuners, I.F. transformers, convergence box assemblies; U.S. components marked "B", "C", "D", "E", "J", "K", "M", "N", "P", respectively

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P78/446	Richardson, J. July 24, 1975	National Silver Company	66/3415, etc.	Item 651.75 Various ad valorem equivalents set out in schedule, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, barbeque sets, tool sets, etc.
P78/447	Watson, J. July 24, 1975	Volkswagen of America, Inc.	73-12-03518	Item 409.00 4¢ per lb. plus 27%; 3.5¢ per lb. plus 22.5%	Item 405.25 1.6¢ per lb. plus 10.5%; 1.4¢ per lb. plus 9%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New York; Los Angeles; San Francisco; New Orleans; Portland, Oreg. Benzenoid alkyd resin paints
P78/448	Maletz, J. July 24, 1975	Standard Surplus Sales, Inc.	72-7-01490	Item 376.56 24.5%	Item 772.30 12.5%	Agreed statement of facts	Los Angeles Men's rubberized rain suits; fabric surface of nontransparent rubber or plastics
P78/449	Maletz, J. July 24, 1975	Technical Marketing Associates	70/24622, etc.	Item 700.60 20%	Item 700.55 10%	Agreed statement of facts	Los Angeles Footwear uppers of which over 90% of exterior surface area is rubber or plastics, not having foxing or foxing like band applied or molded at sole and overlapping upper

P75/450	Newman, J. July 24, 1975	Fedtro, Inc.	67/44698	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/451	Richardson, J. July 28, 1975	Border Brokerage Co., Inc., et al.	70/15787, etc.	Item 652.35 17%, 15% or 13%	Item 652.18 11%, 10% or 8.5%	Kelco, Incorporated, et al. v. U.S. (C.D. 3031)	Blaine (Seattle) Conveyor chain, chiefly used for transmission of power, and parts thereof
P75/452	Richardson, J. July 28, 1975	Eaton Mfg. Co. et al.	67/11792, etc.	Item 666.15 12%, 10.5% or 9.5%	Item 680.45 9%, 8% or 7%	Eaton Manufacturing Co. et al. v. U.S. (C.D. 4207, rev'd and remanded C.A.D. 1076, remanded C.D. 4571)	New York Outboard drives
P75/453	Landis, J. July 28, 1975	F. W. Myers & Co., Inc.	73-4-00916	Item 735.20 10%	Item 696.30 6%	Consent judgment	Detroit Kayak (canoe) paddles of wood or bark
P75/454	Watson, J. July 28, 1975	Mar-Lyn Imports, Inc., et al.	71-8-00864, etc.	Item 748.20 28%, 25%, 23.5% and 22%	Item 774.60 17%, 15%, 13.5%, 11.5% and 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/455	Watson, J. July 28, 1975	Montgomery Ward & Co.	74-1-00031, etc.	Item 685.30 8% and 6.5% Item 685.50 9% and 7.5%	Item 678.50 6% and 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM stereo phono 8 track assembly with or without speakers or accessories; AM/FM stereo cassette combination

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/456	Watson, J. July 28, 1975	C. J. Tower & Sons of Buffalo, Inc.	72-9-01975	Item 657.20 19%	Item 608.25 10.5%	Judgment on the pleadings W. R. Filbin & Co., Inc. v. U.S. (C.D. 3897)	Buffalo Crosby shackles
P75/457	Re, J. July 28, 1975	Spartans Industries, Inc., et al.	71-6-00449, etc.	Item 772.15 17%	Item 772.35 10% and 6%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P75/458	Richardson, J. July 30, 1975	Green Giant Company	71-8-00956	Item 144.10 25% and 5¢ per lb.	Item 144.20 10% and 3.2¢ per lb.	Judgment on the pleadings (plaintiff's motion granted; defendant's cross-motion to dismiss in part denied)	New York; Philadelphia Blanch and frozen whole mushrooms
P75/459	Richardson, J. July 30, 1975	Green Giant Company	72-2-00288	Item 144.10 25% and 5¢ per lb.	Item 144.20 10% and 3.2¢ per lb.	Judgment on the pleadings (plaintiff's motion granted; defendant's cross-motion to dismiss in part denied)	New York; San Francisco Blanch and frozen whole mushrooms
P75/460	Ford, J. August 4, 1975	F. W. Myers & Co., Inc.	67/89524, etc.	Item 727.55 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.

P75/461	Ford, J. August 4, 1975	F. W. Myers & Co., Inc.	67/89535, etc.	Item 727.55 20%	Item 810.10 or 812.10 Free of duty	F. W. Myers & Co., Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household and personal effects of persons arriving in U.S.
P75/462	Landis, J. August 4, 1975	Border Brokerage Company, Inc.	73-4-01013	Item 774.60 8.5%	Item 666.00 Free of duty (entries covered by protest 30042-001375) Protests 30042-001181 and 30042-001443 dismissed	Consent judgment U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Plastic planting bullets and trays
P75/463	Watson, J. August 4, 1975	Arbor Import Corp. et al.	69/52742, etc.	Item 772.06 21¢ per lb.+ 17%; 18.9¢ per lb.+15%	Item 772.15 17% and 15%	Davar Products, Inc. v. U.S. (C.D. 3880)	New York Plastic tidbit trays, snack sets, etc.
P75/464	Watson, J. August 4, 1975	BPM International, Ltd., et al.	73-1-00084, etc.	Item 685.30 8% and 6.2%	Item 678.50 6% or 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York A combination article containing a tape player as an important element of the combination

[Abs. P75/464]

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/465	Watson, J. August 4, 1975	Sanyo Electric, Inc.	74-6-01652, etc.	Item 685.30 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Los Angeles A combination article containing a tape player as an important element of the combination
P75/466	Watson, J. August 4, 1975	Tapscott's, Inc.	72-1-00117	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Articles of plastic
P75/467	Newman, J. August 4, 1975	S. Hiller & Co. et al.	68/47928, etc.	Item 653.39 19% (items marked "A" and "B")	Appraisements and liquidations not in accordance with law; protests premature and dismissed; regional commissioner to take appropriate action (items marked "A" and "B")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High-intensity lamps with bulbs (items marked "A"); fluorescent lamps with bulbs (items marked "B"); not entireties

P75/468	Newman, J. August 4, 1975	Matsushita Electric Corp. of America	73-8-02181	Item 685.30 6.5%	Item 678.50 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	San Juan, P.R. Stereo radio phonographs w/8-track player
P75/469	Newman, J. August 4, 1975	Nova Manufacturing Co., Inc., et al.	70/6260, etc.	Item 654.00 or 653.30 19%	Separate appraisements not made for bulbs and lamps; appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York Lamps imported with electrical light bulbs (electric filament bulbs or electric fluorescent bulbs); not entireties
P75/470	Richardson, J. August 5, 1975	Panation Trade Co.	67/70165, etc.	Item 740.37 55%, 49% and 44%	Item 740.60 20%, 18% and 16%	Panation Trade Co. v. U.S. (C.D. 3802)	New York Religious articles of a purely devotional character
P75/471	Landis, J. August 5, 1975	Montgomery Ward and Company, Inc.	74-9-02538	Item 725.47 17%	Item 726.80 8.5%	Montgomery Ward & Co. v. U.S. (C.A.D. 1131)	Charleston, S.C. Musical instrument parts
P75/472	Watson, J. August 5, 1975	Fil-American Trading Co., Inc.	67/22190, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/473	Watson, J. August 5, 1975	Powers Flowers	68/122, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/474	Maletz, J. August 5, 1975	New York Merchandise Co., Inc.	68/31425, etc.	Item 700.60 20%	Item 700.55 12.5% or 8.5%	Agreed statement of facts	San Diego Footwear uppers of which over 90% of exterior surface area is rubber or plastics, not having foxing or foxing like band applied or molded at sole and overlapping upper
P75/475	Newman, J. August 5, 1975	Allied International, American Eagle Corp.	74-8-02058, etc.	Item 657.20 9.5%	Item 646.56 0.1¢ per lb.	Jacobson Mfg. Co., Inc. v. U.S. (Abs. P74/922)	New Orleans Washered lock-nuts (peknuts)
P75/476	Newman, J. August 5, 1975	J. H. Monteath Co., Inc.	69/51892	Item 207.00 15%	Item 202.44 Free of duty	Agreed statement of facts	New York Bags of rosewood blocks

P75/477	Richardson, J. August 6, 1975	Allied International, American Eagle Co.	74-8-02055, etc.	Item 657.20 9.5%	Item 646.56 0.1¢ per lb.	Jacobson Manufacturing Co., Inc. v. U.S. (Abs. P74/922)	New York Washered lock-nuts (pek nuts)
P75/478	Richardson, J. August 6, 1975	F. W. Myers & Co., Inc.	74-4-00987	Item 692.35 5.5%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Port Huron (Detroit) Tractors and parts of tractors
P75/479	Maletz, J. August 6, 1975	Eldon Industries, Inc.	69/45661	Item 737.90 31%	Item 735.20 18%	Montgomery Ward & Co. v. U.S. (C.D. 4195)	Los Angeles Target games
P75/480	Ford, J. August 7, 1975	Halvorson, Inc.	71-12-02024	Item 692.35 6.5%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Duluth Tractors and parts of tractors
P75/481	Ford, J. August 7, 1975	Laconia Needle Mfg. Co.	66/7951	Item 670.58 $1 per 1,000 + 30%	Item 609.88 8.5%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P75/482	Ford, J. August 7, 1975	Spiegel, Inc.	73-7-02052, etc.	Item 685.22 10.4% Item 684.70 9%	Item 685.25 7½ or 6%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios (parts of radios); not entireties; not earphones
P75/483	Newman, J. August 7, 1975	J. Gerber & Co., Inc.	69/29608	Item 653.37 17%	Appraisement and liquidation not in accordance with law: protest premature and dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York High intensity lamps and bulbs; not entireties

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/484	Newman, J. August 7, 1975	International Expediters, Inc., et al.	67/54608, etc.	Item 654.00 or 653.39 19%	Separate appraisements not made for bulbs and lamps; appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York Lamps imported with electrical light bulbs (electric filament bulbs or electric fluorescent bulbs); not entireties
P75/485	Newman, J. August 7, 1975	Mobilite, Inc.	71-10-01296, etc.	Item 653.39 19%	Item 686.90 5.5%, 4.5% or 4%; export value $0.12 each, net packed (high intensity bulbs) Item 687.30 6%, 5.5% or 5%; export value $0.23	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together; not entireties

					each, not packed (fluorescent bulbs) Item 653.30 19%; export values—appraised values less $0.12 for each high intensity bulb and $0.23 for each fluorescent bulb (high intensity and fluorescent lamps)			
P75/456	Newman, J. August 7, 1975	Nova Manufacturing Co., Inc., et al.	66/14009, etc.	Item 654.00 or 653.30 19%	Separate appraisements not made for bulbs and lamps; appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York Lamps imported with electrical light bulbs (electric filament bulbs or electric fluorescent bulbs); not entireties	

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/487	Maletz, J. August 11, 1975	New York Merchandise Co., Inc.	66/4214, etc.	Item 700.60 20%	Item 700.55 12.5%	Agreed statement of facts	San Diego Footwear uppers of which over 90% of exterior surface area is rubber or plastics, not having foxing or foxing like band applied or molded at sole and overlapping upper
P75/488	Watson, J. August 12, 1975	Teters Floral Products Co., Inc.	71-10-01466	Item 748.20 28%, 26.5%, 25%, 23.5%, 22% or 21%	Item 774.60 17%, 15%, 13.5% 11.5%, 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4206)	New Orleans; Laredo; Seattle Articles of plastics
P75/489	Maletz, J. August 12, 1975	Mego Corp.	67/10031, etc.	Item 737.90 35%, 31%, 28% or 24%	Item 734.20 11.5%, 11%, 9%, 8% or 7%	Mego Corp. v. U.S. (C.A.D. 1137)	New York Miniature pinball articles having manually operated spring mechanisms
P75/490	Maletz, J. August 12, 1975	Mego Corp.	69/53008	Item 737.90 35%	Item 734.15 20%	Agreed statement of facts	New York Games played on boards of special design
P75/491	Re, J. August 12, 1975	Amerisam Co., Ltd.	73-7-02034	Item 684.70 12%, 10% or 7.5%	Item 685.25 10%, 8.5% or 6%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios

P75/492	Re, J. August 12, 1975	Beck Distributing Corp.	70/16148	Item 653.39 19%	Item 653.65 6.5%	Agreed statement of facts	New York Electric lighting equipment designed for motor vehicles
P75/493	Re, J. August 12, 1975	Sentry Shoe Co. Div. of Genesco Import	73-10-02926	Item 700.60 20%	Item 700.55 7%	Agreed statement of facts	New York A thong with a gold plastic upper, knock-on metal heel and composition sole
P75/494	Ford, J. August 13, 1975	Hub Floral Corporation	72-9-02004	Duty assessed on entire quantity of merchandise although certain cartons were reported "manifested, not found"	Duties improperly assessed as follows: $15.35 on 3 cartons; $58.25 on 12 cartons; $329.36 on 15 cartons; district director to reliquidate entries 115024, 28878, 17186, making allowance for duties as set forth above	Judgment on the pleadings Harry N. Bloomfield Co. v. U.S. (C.A.D. 1023)	Boston Shortage
P75/495	Re, J. August 13, 1975	International Seaway Trading Corp.	73-10-02921	Item 700.60 20%	Item 700.55 12.5%	Agreed statement of facts	New York Ladies vinyl sandals with an open toe and vinyl sole
P75/496	Boe, C. J. August 18, 1975	Beck Distributing Corp.	60/17729, etc.	Par. 369(c) 11½%, 11%, 10½%, 9½% or 8½%	Par. 353 or 372 8¾%, 7¾% or 6¾%	Beck Distributing Corp. v. U.S. (C.D. 4298)	New York Parts, in c.v. of metal, of internal combustion engines, carburetor type

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P75/497	Newman, J. August 18, 1975	Matsushita Electric Corp. of America	73-8-02178	Item 685.30 8% or 6.5%	Item 678.50 6% and 5% (models SE 2080, SE 3080, SE 4040) Item 685.50 7.5% (model 4080)	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573) (models SE 2080, SE 3080, SE 4040)	New York Stereo radio phonographs w/8-track player (models SE 2080, SE 3080, SE 4040 Stereo radio phonograph with cassette recorder combination (model 4080)
P75/498	Newman, J. August 18, 1975	Matsushita Electric Corp. of America	74-9-02552	Item 685.30 6.5% (all models except two below) Item 685.50 7.5% (model SE 4080, entry 112306; model SE 4040, entry 101787)	Item 678.50 5% (all models except one below) Item 685.50 7.5% (model SE 4080)	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573) (all models except SE 4080)	New York; San Francisco; Los Angeles; Seattle; San Juan Stereo radio phonographs w/8-track player (models SE 2080, SE 2090, SE 3070, SE 3080, SE 4040, SE 4340, SE 4440) Stereo radio phonograph cassette tape recorder combination (model SE 4080)
P75/499	Watson, J. August 20, 1975	Bernard Schwartz & Co.	73-3-00754	Item 748.20 21%	Item 774.60 8.5% Protests denied and overruled as to articles described on invoices as item nos. 907, T-65 and T-49	Judgment on the pleadings Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4306)	New York Artificial flowers, etc.in c.v. of plastic

P75/500	Newman, J. August 20, 1975	Matsushita Electric Corp. of America	73-8-02179	Item 685.30 6.5%	Item 678.50 5% (models SE 2080, SE 3080, SE 4040) Item 685.50 7.5% (model SE 4080)	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573) (models SE 2080, SE 3080, SE 4040)	Seattle Stereo radio phonographs w/8-track player (models SE 2080, SE 3080, SE 4040) Stereo radio phonograph with cassette recorder (model SE 4080)
P75/501	Newman, J. August 20, 1975	Matsushita Electric Corp. of America	73-8-02180	Item 685.30 6.5%	Item 678.50 5% (models SE 2080, SE 3080, SE 4040) Item 685.50 7.5% (model SE 4080) Entry 100597 (protest 3002-3-000030) severed and dismissed for failure to state a justiciable issue	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573) (models SE 2080, SE 3080, SE 4040)	Tacoma (Seattle) Stereo radio phonograph w/8-track player (models SE 2080, SE 3080, SE 4040) Stereo radio phonograph with a cassette recorder combination (model SE 4080)
P75/502	Newman, J. August 20, 1975	Matsushita Electric Corp. of America	74-4-01020	Item 685.30 9.5%, 8% and 6.5% (all models except one below) Item 685.50 10% (model SE 4080)	Item 678.50 7%, 6% and 5% (all models except one below) Item 685.50 10% (model SE 4080) Entry 131233 stricken from action	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573) (all models except SE 4080)	New York; San Francisco; Los Angeles; Seattle Stereo radio phonographs w/8-track player (models SE 990, SE 2080, SE 3070, SE 3080, SE 4040, SE 4070, SE 4240, SE 4440) Stereo radio phonograph cassette tape recorder combination (model SE 4080)

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P75/503	Newman, J. August 20, 1975	Matsushita Electric Corp. of America	75-3-00523	Item 685.30 8% or 6%	Item 678.50 6% or 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York; Seattle; Los Angeles Stereo radio phonographs w/8-track player
P75/504	Re, J. August 20, 1975	Bruce Duncan Co., a/c Hong Horizons	73-1-00264	Item 274.70 5.5% Item 206.60 8%	Item 765.03 Free of duty	Judgment on the pleadings Sanji Kobata et al. v. U.S. (C.D. 4213)	Los Angeles Hand painted wall hangings
P75/505	Ford, J. August 21, 1975	Globe Importing Co.	62/335	Par. 397 19% (items marked "A" and "B")	Separate appraisements not made for strainers; appraisements invalid and void; liquidations invalid; protest premature and dismissed; entries ordered returned to regional commissioner for administrative action (items marked "A" and "B"	Davies, Turner & Company v. U.S. (Abs. 69651) (items marked "A") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459) (items marked "B")	New York Removable flat basin strainers (items marked "A") and removable basket type strainers (items marked "B") imported together with bases

P75/506	Watson, J. August 21, 1975	APF Electronics, Inc., et al.	72-6-01277, etc.	Item 685.30 8%, 9.5% and 6.5%	Item 678.50 7%, 6% or 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York Combination article containing a tape player as an important element of the combination
P75/507	Watson, J. August 21, 1975	BPM International, Ltd.	74-11-03181, etc.	Item 685.30 8% or 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York Combination article containing a tape player as an important element of the combination
P75/508	Watson, J. August 21, 1975	Montgomery Ward & Co.	72-1-00139-8	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York Airline AM/FM stereo phono 8-track assembly with speakers
P75/509	Watson, J. August 21, 1975	Montgomery Ward & Co.	73-4-00883, etc.	Item 685.30 6.5% Item 685.50 9% and 7.5%	Item 678.50 6% and 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM stereo phono 8-track assembly with or without speakers or accessories
P75/510	Watson, J. August 26, 1975	Avdel Corp.	68/31823, etc.	Item 657.20 Applicable rates depending on date of entry	Item 646.40 Applicable rates depending on date of entry	Summary judgment Avdel Corp. v. U.S. (C.D. 4575)	New York Rivets

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P75/511	Newman, J. August 26, 1975	Fedtro, Inc.	68/7172	Item 790.55 20%	Item 774.60 17%	Judgment on the pleadings	New York Reflectors (model REF-8)
P75/512	Newman, J. August 26, 1975	Fedtro, Inc.	68/43899	Item 790.55 20%	Item 774.60 17%	Judgment on the pleadings	New York Reflectors (model REF-8)
P75/513	Watson, J. August 27, 1975	Reliance Trading Corp. of America	72-1-00145	Item 748.20 25%, 28.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; Chicago; Los Angeles Artificial flowers, etc., in o.v. of plastic
P75/514	Newman, J. August 27, 1975	Guardian Industries Corp.	73-12-03497	Item 531.39 7.5%	Item 531.27 Free of duty	Pittsburgh Plate Glass Company v. U.S. (C.D. 4553)	Detroit Refractory bricks, firebricks, tank blocks (Durital M70; Supral 40)
P75/515	Landis, J. August 28, 1975	Paillard, Inc.	72-5-01070	Item 722.50 21%	Item 722.80 11%	J. E. Bernard & Co., Inc. v. U.S. (C.D. 4215)	New York Photographic film reel cans
P75/516	Watson, J. August 28, 1975	Zunold Trading Corp. et al.	66/21232(B), etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3270)	New York Plastic artificial flowers

P75/517	Landis, J. August 29, 1975	International Mercantile Corp.	70/44341	Item 657.35 0.8¢ per lb. + 10.5%	Item 654.00 7%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	San Diego Adjustable showerheads
P75/518	Watson, J. August 29, 1975	Novelty Import Co., Inc.	67/64353	Item 772.06 21¢ per lb. + 17%	Item 772.15 17%	Judgment on the pleadings	New York Collapsible plastic tumblers
P75/519	Re, J. August 29, 1975	RCA Corporation	73-6-01561	Item 685.23 10.4%	Item 685.25 7%	Judgment on the pleadings Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Indianapolis Earphones
P75/520	Landis, J. September 4, 1975	Lucas Electrical Services, Inc.	71-9-01085	Item 653.30 19%	Item 653.65 7.5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Motor vehicle light units
P75/521	Watson, J. September 4, 1975	Dexter Thread Mills, Inc., et al.	68/33548, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc.
P75/522	Watson, J. September 4, 1975	Sanyo Electric, Inc.	75-5-01033, etc.	Item 685.30 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4373)	Los Angeles Combination article containing a tape player as an important element of the combination
P75/523	Watson, J. September 4, 1975	Bernard Schwartz & Co.	67/380, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

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P75/524	Watson, J. September 4, 1975	Volkswagen of America, Inc.	67/18661, etc.	Item 409.00 7¢ per lb. + 45%	Item 405.25 2.8¢ per lb. + 18%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Chicago Benzenoid alkyd resin paints
P75/525	Watson, J. September 4, 1975	Volkswagen of America, Inc.	70/55751	Item 409.00 4.9¢ per lb. + 31%	Item 405.25 1.9¢ per lb. + 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New Orleans Benzenoid alkyd resin paints
P75/526	Watson, J. September 4, 1975	Volkswagen of America, Inc.	70/56344, etc.	Item 409.00 5.5¢ per lb. + 36%; or 4.9¢ per lb. + 31%	Item 405.25 2.2¢ per lb. + 14%; or 1.9¢ per lb. + 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Philadelphia Benzenoid alkyd resin paints
P75/527	Watson, J. September 4, 1975	Volkswagen of America, Inc.	70/64014, etc.	Item 409.00 7¢ per lb. + 45%; or 4.9¢ per lb. + 31%	Item 405.25 2.8¢ per lb. + 18%; or 1.9¢ per lb. + 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Boston Benzenoid alkyd resin paints
P75/528	Re, J. September 4, 1975	Kurt S. Adler, Inc.	71-6-00314	Item 772.95 25.5%	Item 688.40 11.5%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified

P75/529	Watson, J. September 8, 1975	Volkswagen of America, Inc.	70/44402	Item 409.00 4.9¢ per lb. plus 31%	Item 405.25 1.9¢ per lb. plus 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Jacksonville (Tampa) Benzenoid alkyd resin paints
P75/530	Watson, J. September 8, 1975	Volkswagen of America, Inc.	70/53057	Item 409.00 4.9¢ per lb. plus 31%	Item 405.25 1.9¢ per lb. plus 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Toledo (Cleveland) Benzenoid alkyd resin paints
P75/531	Re, J. September 8, 1975	Kurt S. Adler, Inc.	71-6-00411	Item 653.30 19%	Item 688.40 8%	Agreed statement of facts	New York "Treetops", decorative articles for Christmas trees, in c.v. of metal; electrified
P75/532	Re, J. September 8, 1975	Sanyo Electric, Inc.	73-1-00091	Item 685.23 10.4% Item 948.00 10% surcharge	Not subject to 10% surcharge under item 948.00	Agreed statement of facts	New York Magnovox brand transistor radios with earphones, exported from Japan prior to 8/16/71
P75/533	Richardson, J. September 9, 1975	Amplifone Corporation	69/5135, etc.	Item 682.10 12.5% Item 682.07 11%, 10% or 8.5% Item 682.60 15% or 12% Without allowance under item 807.00	As assessed with allowance under item 807.00 for cost or value of articles marked "A" (fabricated components, the product of U.S.) on invoices	General Instrument Corporation v. U.S. (C.D. 4507; C.A.D. 1128)	Chicago American goods returned; transformers and coils
P75/534	Watson, J. September 9, 1975	Pacific Rim Distributors, Inc., et al.	71-10-01461, etc.	Item 748.20 25%, 23.5%, 22% or 21%	Item 774.60 13.5%, 11.5%, 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Articles of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/535	Watson, J. September 9, 1975	Volkswagen of America, Inc.	67/31597, etc.	Item 409.00 7¢ per lb. plus 45%; 6.3¢ per lb. plus 40%; 5.5¢ per lb. plus 36%; or 4.9¢ per lb. plus 31%	Item 405.25 2.8¢ per lb. plus 18%; 2.5¢ per lb. plus 16%; 2.2¢ per lb. plus 14%; 1.9¢ per lb. plus 12.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Los Angeles Benzenoid alkyd resin paints
P75/536	Watson, J. September 10, 1975	Volkswagen of America, Inc.	67/30851, etc.	Item 409.00 7¢ per lb. plus 45%	Item 405.25 2.8¢ per lb. plus 18%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	San Francisco Benzenoid alkyd resin paints
P75/537	Maletz, J. September 10, 1975	Florsheim Shoe Co., Div. of Interco.	74-3-00771	Item 121.30 9%	Item 121.57 5%	Florsheim Shoe Company, Division of Interco., Inc. v. U.S. (C.D. 4495)	Chicago Buffalo calf leather
P75/538	Maletz, J. September 10, 1975	Sutra Import Corp.	72-6-01401	Item 734.10 10%	Item 711.98 6%	Judgment on the pleadings	New York "Scorers"
P75/539	Maletz, J. September 10, 1975	Sutra Import Corp.	72-6-01402	Item 734.10 10%	Item 774.25 7%	Judgment on the pleadings	New York "Cushions, or rubber cushions"
P75/540	Ford, J. September 11, 1975	America Asia Co. et al	285056-K, etc.	Par. 411 50% or 47 ½%	Par. 412 16 ¾%	Agreed statement of facts	Los Angeles Rattancore bird cages, lanterns, trays, napkin holders, suitcases, rickshaws, doilies, hanging planters

P75/541	Richardson, J. September 11, 1975	Amplifone Corporation	69/53799, etc.	Item 682.10 12.5% Item 682.07 11%, 10% or 8.5% Without allowance under item 807.00	As assessed with allowance under item 807.00 for cost or value of articles marked "A" (fabricated components, the product of U.S.) on invoices	General Instrument Corporation v. U.S. (C.D. 4507, C.A.D. 1128)	Chicago American goods returned; transformers
P75/542	Watson, J. September 11, 1975	American Hoechst Corp.	72-8-01715	Item 409.00 31% plus 4.9¢	Protest 1001-1-025875 with regard to "PV Fast Violet BL-Type 3100" severed; all claims with regard to classification, liquidation, assessment of duties on said merchandise dismissed with prejudice	Defendant's motion for partial judgment on the pleadings granted	New York "PV Fast Violet BL-Type 3100"
P75/543	Maletz, J. September 11, 1975	Border Brokerage Co., Inc., a/c Jones Tent & Awning, Ltd.	71-12-02049	Item 380.90 12%	Item 748.40 8%	Agreed statement of facts	Blaine (Seattle) Parkas (Eldorado Jackets) in c.v. of down, which is not a textile material
P75/544	Newman, J. September 11, 1975	Matsushita Electric Corp. of America	73-11-03131	Item 685.30 8% or 6.5%	Item 678.50 6% and 5% (Motion denied as to entry 125010)	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York; Los Angeles; Seattle; Baltimore; Miami Stereo radio phonographs w/8-track player
P75/545	Richardson, J. September 16, 1975	Instrumentation Associates, Inc.	64/583, etc.	Par. 360 25½% and 22½%	Par. 353 15% and 13½%	Instrumentation Associates v. U.S. (C.D. 2421) Instrumentation Associates, Inc. v. U.S. (C.D. 3022)	New York Various instruments and parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/546	Watson, J. September 16, 1975	East Coast Specialties Co.	73-7-01755, etc.	Item 409.00 30% plus 5.5¢ per lb.; 31% plus 4.9¢ per lb.; 27% plus 4¢ per lb.; 22.5% plus 3.5¢ per lb.	Item 405.25 14% plus 2.2¢ per lb.; 12.5% plus 1.9¢ per lb.; 10.5% plus 1.6¢ per lb.; 9% plus 1.4¢ per lb.	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New York Paints
P75/547	Watson, J. September 16, 1975	Reliance Trading Corp. of Ill.	67/82463, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3273) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc., in c.v. of plastic
P75/548	Watson, J. September 16, 1975	Standard Brands Paint Co., Inc.	73-12-03436, etc.	Item 202.66 10% or 8.5%	Item 206.60 7% or 6%	Standard Brands Paint Co. v. U.S. (C.A.D. 1148)	Los Angeles Unassembled frames, of wood, designed for and dedicated to being joined together into picture frames
P75/549	Watson, J. September 16, 1975	Standard Brands Paint Co., Inc.	74-10-02709, etc.	Item 202.66 8.5%	Item 206.60 6%	Standard Brands Paint Co., Inc. v. U.S. (C.A.D. 1148)	Los Angeles Unassembled frames, of wood, designed for and dedicated to being joined together into picture frames

P75/550	Maletz, J. September 16, 1975	Lamb-Weston, Inc., et al.	70/31281, etc.	Item 138.00 17.5%	Item 136.91 1.75¢ per lb.	General Freight Services, Inc., a/c Lamb-Weston, Inc., et al. v. U.S. (C.D. 4590)	Portland, Oreg. Quick frozen silverskin onions, imported with roots, tops and outer layer of skin removed, not reduced in size
P75/551	Newman, J. September 16, 1975	Beck Distributing Corp.	66/2483, etc.	Par. 369(c) 10½% or 9½%	Par. 353 or 372 8¾% or 7¾%	Beck Distributing Corp. v. U.S. (C.D. 4298)	New York Parts, in c.v. of metal, of internal combustion engines, carburetor type
P75/552	Watson, J. September 17, 1975	M.E. Duncan Co., Inc., et al.	67/76218, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles—Long Beach Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/553	Watson, J. September 17, 1975	Montcalm Products Corp.	69/41332, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Artificial flowers, etc., in c.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/554	Watson, J. September 17, 1975	Moskatel's, Inc.	69/48989	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastic (items marked "B")
P75/555	Watson, J. September 17, 1975	Standard Brands Paint Co., Inc.	70/15530, etc.	Item 202.66 17% or 15%	Item 206.60 12% or 10.5%	Standard Brands Paint Co. v. U.S. (C.A.D. 1148)	Los Angeles Unassembled frames, of wood, designed for and dedicated to being joined together into picture frames
P75/556	Maletz, J. September 17, 1975	Kohner Bros., Inc.	73/4337, etc.	Item 737.90 28% or 24%	Item 734.15 16% or 14%	Agreed statement of facts	New York Parts of games played on boards of special design
P75/557	Newman, J. September 17, 1975	Norca Corp.	72-10-02171	Item 657.20 11%	Item 653.95 10% at value of 42¢ ea. (strainers) Item 657.20 11% at value of 11¢ ea. (bases)	The Westbrass Company v. U.S. (C.D. 4293)	New York Sink strainers and bases imported together; not entireties

P75/558	Maletz, J. September 22, 1975	Gordon H. Dickson	73-9-02692	Item 138.00 17.5%	Item 136.91 1.75¢ per lb.	General Freight Services, Inc., a/c Lamb-Weston, Inc., et al. v. U.S. (C.D. 4590)	Seattle Quick frozen silverskin onions, imported with roots, tops and outer layer of skin removed, not reduced in size
P75/559	Ford, J. September 23, 1975	Ford Motor Company	72-11-02259-S	Item 692.35 5.5%	Item 692.30 Free of duty	Agreed statement of facts	Detroit Parts for tractors (Ford Model 7000)
P75/560	Ford, J. September 24, 1975	Atkins Kroll & Co., Limited	73-9-02545	Par. 405 20%	Par. 412 16⅔%	Agreed statement of facts	Baltimore Two plys of lauan veneer divided by a paper insert
P75/561	Richardson, J. September 24, 1975	National Silver Company	66/69715	Item 651.75 Various ad valorem equivalents set out in schedule, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 Appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, bar sets, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Part or Item No. and Rate		
P75/562	Maletz, J. September 24, 1975	Mego Corp.	70/37405, etc.	Item 737.90 35%, 31% or 28% (items marked "A" or "B")	Item 737.55 21% or 16.5% (items marked "A" on entries in schedule A, attached to decision and judgment) Separate values not made on merchandise; appraisements and liquidations void as premature; protests dismissed; entries returned to regional commissioner for administrative action (items marked "B" on entries in schedule B, attached to decision and judgment)	Agreed statement of facts	New York Toy alphabet building blocks (items marked "A") Separate articles imported together: (1) toy pull wagon; (2) building blocks (items marked "B")

P75/563	Newman, J. September 24, 1975	Aimcee Wholesale Corp.	66/45011	Item 651.75 Various ad valorem equivalent rates set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	San Francisco Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/564	Newman, J. September 24, 1975	Aimee Wholesale Corp.	67/9562, etc.	Item 651.75 Various ad valorem equivalent rates set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	San Francisco Flatware sets
P75/565	Newman, J. September 24, 1975	Fedtro, Inc.	69/17621, etc.	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers
P75/566	Boe, C. J. September 30, 1975	Sterling Novelty Products	74-1-00226	Item 706.50 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	San Francisco Articles in c.v. of plastic

P75/567	Landis, J. September 30, 1975	Warshawsky & Co.	72-3-00625	Item 653.39 19%	Item 653.65 5%	Warshawsky & Company v. U.S. (C.D. 4410)	Chicago Lights
P75/568	Newman, J. September 30, 1975	National Silver Co.	67/69589	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	New Bedford (Boston) Flatware sets
P75/569	Ford, J. October 1, 1975	Matsushita Electric Corp. of America	73-2-00525	Item 685.30 8% or 6%	Item 678.50 6% and 5% Entry K325985 (protest 1001-2-042855) severed and protest dismissed	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York; Seattle Stereo Radio Phonographs w/8 track player

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/570	Ford, J. October 1, 1975	Sterling Novelty Products	72-12-02623	Item 706.60 20%	Item 774.00 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York; San Francisco Articles in c.v. of plastic (shopping bags)
P75/571	Watson, J. October 1, 1975	APF Electronics, Inc.	72-5-01001, etc.	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Boston A combination article containing a tape player as an important element of the combination
P75/572	Watson, J. October 1, 1975	Dolliff & Company, Inc.	73-5-01214	Item 653.39 19%	Item 683.65 5.5% or 5%	Judgment on the pleadings Warshawsky & Company v. U.S. (C.D. 4410)	Boston Automobile fog lights and driving lights together with lamp units
P75/573	Watson, J. October 1, 1975	Quon Quon Co.	69/57451	Item 772.06 17% + 21¢ per lb.	Item 772.15 17%	Judgment on the pleadings Davar Products, Inc. v. U.S. (C.D. 3880)	Los Angeles Plastic fruit containers (#2008 and #2009)
P75/574	Maletz, J. October 1, 1975	Stahlwood Toy Manufacturing Co., Inc.	71-6-00334	Item 737.90 28%, 24% or 21%	Item 737.55 16.5%, 14.5% or 12.5%	Agreed statement of facts	New York Alphabet blocks; building blocks; bricks and shapes
P75/575	Re, J. October 1, 1975	Thornton Glove Co., Inc.	74-1-00104-S	Item 705.85 15%	Item 735.05 7.5%	Judgment on the pleadings	New York Mittens

P75/576	Richardson, J. October 7, 1975	Adolco Trading Co.	68/42985, etc.	Item 389.60 25¢ per lb. plus 30%	Item 386.05 50%	Agreed statement of facts	New York Net string shopping bags (net articles)
P75/577	Richardson, J. October 7, 1975	General Instrument Corporation	73-9-02676	Item 685.20 9%, 8% or 7% without allowance under item 807.00	Items 685.20/ 807.00 9%, 8% or 7%; cost or value of U.S. components (items marked "K") deductible from full value of imported flybacks	General Instrument Corporation v. U.S. (C.D. 4507)	Springfield (Boston); Calais (Portland, Maine) American goods returned; flybacks (horizontal output transformers)
P75/578	Landis, J. October 7, 1975	Roffe-Rene, Inc.	72-2-00323	Item 336.60 37.5¢ per lb. plus 36%	Item 338.15 30¢ per lb. plus 30% Action abandoned-dismissed as to entries 14347 and 16829	Agreed statement of facts	Seattle Merchandise described as # 55019 cloth
P75/579	Watson, J. October 7, 1975	Pacific Coast Commercial, Inc.	72-12-02487	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Merchandise in c.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
						Joseph Markovits, Inc. v. U.S. (C.D. 4306)	
P75/580	Richardson, J. October 8, 1975	Adolco Trading Co.	66/33264(B), etc.	Item 389.60 25¢ per lb. plus 30%	Item 386.65 50%	Agreed statement of facts	New York Net string shopping bags (net articles)
P75/581	Richardson, J. October 8, 1975	Adolco Trading Co.	68/27797, etc.	Item 389.60 25¢ per lb. plus 24%; or 25¢ per lb. plus 27%	Item 386.08 45% or 40%	Agreed statement of facts	New York Net string shopping bags (net articles)
P75/582	Richardson, J. October 8, 1975	New York Merchandise Co., Inc.	66/3393, etc.	Item 653.40 or 653.39 19%	Item 688.40 11.5% or 10%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Diego Electric bird cages, etc.
P75/583	Watson, J. October 9, 1975	New York Merchandise Co., Inc.	66/57219, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4306)	San Diego Merchandise in c.v. of plastic

P75/584	Watson, J. October 9, 1975	Westwood Import Co., Inc.	69/12864, etc.	Item 748.20 26.5% or 23.5%	Item 774.60 15% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic
P75/585	Boe, C. J. October 15, 1975	Bar-Zel Expediters, Inc., a/c Lobeco, Inc.	74-3-00640	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)
P75/586	Boe, C. J. October 15, 1975	Prepac, Inc.	74-3-00752	Item 706.60 20%	Item 774.60 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)
P75/587	Boe, C. J. October 15, 1975	Specialty Industries, Division of Amtel, Inc.	73-12-03539	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (bags)
P75/588	Boe, C. J. October 15, 1975	Sterling Novelty Products, Division of Glovemakers	74-3-00753	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)
P75/589	Ford, J. October 16, 1975	Trans-Aire Electronics, Inc.	70/37514	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/590	Richardson, J. October 16, 1975	John L. Westland & Son, Inc., a/c International Mercantile Corp.	64/20854	Item 651.75 Various ad valorem equivalents set out in schedule, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 Appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, bar sets, etc.
P75/591	Ford, J. October 21, 1975	Associated Dry Goods Corp.	73-4-01025, etc.	Item 706.60 20%	Item 774.60 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Vinyl shopping bags, etc.
P75/592	Ford, J October 21, 1975	Celebrity, Inc.	73-3-00781	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P75/593	Newman, J. October 21, 1975	Imperial International Corp.	66/62460, etc.	Under tariff items and at rates of duty set forth in schedule "A", attached to decision and judgment, in column headed "Assessed Item & Rate"	Under appropriate tariff items and at appropriate rates of duty set forth in column on said schedule headed "Claimed Item & Rate"	National Silver Company v. U.S. (C.D. 4582)	New York Stainless steel flatware

P75/594	Newman, J. October 21, 1975	Metasco, Inc.	68/28510	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	New York Flatware sets
P75/595	Newman, J. October 21, 1975	Henry Wedemeyer, Inc.	68/3144(B), etc.	Item 927.53 3¢ ea. + 67.5%	Item 650.11 1¢ ea. + 17.5%	National Silver Company v. U.S. (C.D. 4582)	New York Knives

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/396	Boe, C.J. October 22, 1975	Sanford Corporation (formerly Sanford Ink Co.)	74-3-00646	Drawback not allowed on involved merchandise	Claim for allowance of drawback sustained; merchandise subject of entry 111189 (drawback) qualifies for drawback under sec. 313, T.A. of 1930, as amended; rate of drawback based upon rate of drawback granted to plaintiff under T.D. 56549(L), as amended by T.D. 66-276(C), T.D. 68-117(D), T.D. 73-26(T).	Agreed statement of facts	Chicago Markers, exported from U.S., manufactured from designated merchandise (oil soluble deep black dye, aluminum alloy extruded shells, plastic barrels, plastic caps), or from duty-free or domestic merchandise of same kind and quality as the designated merchandise
P75/397	Newman, J October 22, 1975	Aimsee Wholesale Corp.	66/51255	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to	Item 651.75 Appropriate rates set forth in column on said schedule, headed "Claimed	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	New York Flatware sets

				decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set		
P75/598	Newman, J October 22, 1975	Imperial International Corp.	66/67927	Under tariff items and rates of duty set forth in schedule A, attached to decision and judgment, in column headed "Assessed Item & Rate"	Under appropriate tariff items and at appropriate rates of duty set forth in column on said schedule headed "Claimed Item & Rate"	National Silver Company v. U.S. (C.D. 4582)	New York Stainless steel flatware
P75/599	Newman, J. October 22, 1975	Imperial International Corp.	67/15859, etc.	Under tariff items and at rate of duty set forth in schedule "A", attached to decision and judgment, in column headed "Assessed Item & Rate"	Under appropriate tariff items and at appropriate rates of duty set forth in column on said schedule headed "Claimed Item & Rate"	National Silver Company v. U.S. (C.D. 4582)	New York Stainless steel flatware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/600	Newman, J. October 22, 1975	Metasco, Inc.	66/50255	Item 651.75 Various ad valorem equivalent rates set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule, headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U. S. (C.D. 4582)	New York Flatware sets

P75/601	Newman, J. October 28, 1975	National Silver Co.	66/19143	Item 651.75 Ad valorem equivalent rate of 111.94%, computed from rate of 65.5% + 3¢ per pc., the rate then existing under Item 927.53 (items marked "A") Item 927.54 60% (items marked "B")	Item 651.75 1¢ per pc. + 12.5% (item 650.09), the specific portion of said rate being applied once against each of the 3 pcs. in each set (items marked "A") Item 650.55 17% (items marked "B")	Import Associates of America et al. v. U.S. (C.A.D. 961); National Silver Company v. U.S. (C.D. 4582) (items marked "A") National Silver Company v. U.S. (C.D. 4582) (items marked "B")	San Francisco Flatware sets, Art. No. S-5049 (items marked "A") Stainless steel flatware, Art. No. S-5051 (items marked "B")
P75/602	Boe, C. J. October 29, 1975	National Silver Co.	69/46915	Item 737.90 21%	Item 772.97 15%	Judgment on the pleadings Amico, Inc., etc. v. U.S. (C.D. 4566)	San Diego Christmas ornaments; inflatable snowballs with 4" Santa Claus inside, Style F-518

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/603	Ford, J. October 29, 1975	Globe Wide Associates, Inc.	63/21193	Par. 353 15% (earphones) Par. 1539(b) 17% + 21¢ per lb. (cases)	Par. 353 13¾% (earphones) Plastic cases classifiable as entireties with radio kits (under par. 353 at 12½%); appraisement of cases separate from radio kits invalid and void; liquidation void; protest premature and dismissed; entry returned to district director for appropriate administrative action	Summary judgment	Philadelphia Earphones and cases; plastic cases entireties with radio kits, which are complete transistor radios in a knocked-down condition
P75/604	Ford, J. October 29, 1975	Marubeni Iida (America), Inc., et al.	67/52170, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

P75/605	Ford, J. October 29, 1975	York Radio Corporation	71-6-00339	Item 684.70 10%	Item 685.25 8.5%	Judgment on the pleadings (defendant's motion to dismiss for lack of prosecution denied; plaintiff's cross-motion for judgment on the pleadings granted as to entries 531686, 139229, 503939, 522899; remaining 6 entries not covering earphones dismissed)	New York Earphones
P75/606	Watson, J. October 29, 1975	M. Adler's Son, Inc.	67/13805, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc., in c.v. of plastics
P75/607	Watson, J. October 29, 1975	Standard Brands Paint Co., Inc.	71-9-01171, etc.	Item 202.66 17%, 15%, 11.5% or 10%	Item 206.60 12%, 10.5%, 8% or 7%	Standard Brands Paint Co. v. U.S. (C.A.D. 1148)	Los Angeles Unassembled frames of wood (picture frames)
P75/608	Boe, C. J. October 30, 1975	Rhodia, Inc.	73-7-01796	Item 425.52 1.8¢ per lb. + 9%	Item 425.24 6%	Judgment on the pleadings	New York Nitrogenous compound (methyl imidazole)
P75/609	Ford, J. October 30, 1975	Globe Importing Co.	63/19458	Par. 39 19%	Separate appraisements not made for strainers and bases; appraisements invalid and void; liquidation premature; protest dismissed; entry returned to district director for appropriate action	Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459)	Philadelphia Removable (basin or sink) strainers imported together with bases; not entireties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/610	Watson, J. October 30, 1975	Standard Brands Paint Co., Inc.	70/28360, etc.	Item 202.66 13.5% or 11.5%	Item 206.60 9.5% or 8%	Standard Brands Paint Co., Inc. v. U.S. (C.A.D. 1148)	Los Angeles Unassembled frames, of wood (picture frames)
P75/611	Watson, J. October 30, 1975	Westwood Import Company, Inc.	68/30443	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Houston Merchandise in c.v. of plastic
P75/612	Newman, J. October 30, 1975	Montgomery Ward & Co.	73-7-02968	Item 685.30 6.5%	Item 678.50 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM stereo phonograph eight-track assembly with accessories (model No. E-08444)
P75/613	Boe, C. J. November 4, 1975	Sterling Novelty Products, Division of Glovemakers	73-6-01396	Item 706.60 20%	Item 774.60 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)
P75/614	Boe, C. J. November 4, 1975	Sterling Novelty Products	73-12-03323	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic

P75/615	Watson, J. November 4, 1975	American Import Co.	69/24315, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic
P75/616	Newman, J. November 4, 1975	Brown Boveri Corp.	65/6710	Par. 353 13¾%	No separate appraised values found for articles; articles not appraised and liquidated according to law; liquidation void; protest premature and dismissed; entry papers returned to regional commissioner for appropriate administrative action	Brown Boveri Corp. et al. v. U.S. (C.D. 2905)	New York Compressor and electric motor: not entireties
P75/617	Boe, C. J. November 5, 1975	Fun World, Inc.	74-3-00751	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)
P75/618	Boe, C. J. November 5, 1975	Sterling Novelty Products	74-1-00222	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic (shopping bags)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/619	Watson, J. November 5, 1975	The American Import Co.	72-12-02553	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Merchandise in c.v. of plastic
P75/620	Richardson, J. November 10, 1975	Hancock Gross, Inc.	68/58667, etc.	Item 657.20 19% or 15% (items marked "A") Item 657.35 1.275¢ per lb. + 15%; or 1¢ per lb. + 13.5% (items marked "B")	Item 653.95 17% or 13.5% (items marked "A") Item 654.00 10% or 9% (items marked "B")	Agreed statement of facts (items marked "A" and "B")	Philadelphia Shower heads (sanitary wares or parts) (items marked "A") Hose nipples or shower heads (sanitary wares or household articles) (items marked "B")
P75/621	Watson, J. November 10, 1975	Signalgo & Rossi, Inc.	74-8-02130	Item 748.20 21%	Item 774.60 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/622	Boe, C. J. November 11, 1975	Travenol Labs, Inc.	73-6-01380	Item 771.35 10¢ per lb.	Item 854.20 Free of duty	Agreed statement of facts	Chicago Cellulosic plastics materials (Cuprophan tubing) imported for use in the manufacture of kidney coils

P75/623	Watson, J. November 11, 1975	Corham Artificial Flower Co. et al.	70/15578, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers Inc. v. U.S.(C.D. 4185) Joseph Markovits, Inc. v. U.S.(C.D. 4396)	Los Angeles Artificial flowers, etc. in c.v. of plastic
P75/624	Boe, C.J. November 12, 1975	Channel Master Div. of Avnet, Inc.	73-8-02439	Item 685.22 10.4%	Item 685.25 7%	Judgment on the pleadings Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/625	Ford, J. November 12, 1975	Lafayette Electronics International, Inc.	68/13517	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios; entireties
P75/626	Ford, J. November 12, 1975	Lafayette Electronics International, Inc.	68/25560	Item 706.08 or 706.60 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios; entireties

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
					premature and dismissed; entry returned to regional commissioner for appropriate administrative action		
P75/627	Ford, J. November 12, 1975	Montgomery Ward & Co.	66/23204	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios; entireties

P75/628	Landis, J. November 12, 1975	Hancock Gross, Inc.	67/34274, etc.	Item 657.20 19% or 15% (items marked "A") Item 657.35 1.275¢ per lb. + 15%; or 1¢ per lb. + 13.5% (items marked "B")	Item 653.95 17% or 13.5% (items marked "A") Item 654.00 10% or 9% (items marked "B")	Agreed statement of facts (items marked "A" and "B")	Philadelphia Shower heads (sanitary wares or parts) (items marked "A") Hose nipples or shower heads (sanitary wares or household articles) (items marked "B")
P75/629	Watson, J. November 12, 1975	Copy Cats Trading Co.	67/73917	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.
P75/630	Newman, J. November 12, 1975	Imperial International Corp. et al.	66/23592, etc.	Item 927.54 60%	Item 650.55 17%	National Silver Company v. U.S. (C.D. 4582)	New York Spoons and ladles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/631	Ford, J. November 13, 1975	C. M. Import & Export Corp.	69/14498	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Chicago Radio cases imported with radios; entireties
P75/632	Ford, J. November 13, 1975	Marubeni-Iida (America), Inc.	67/36105	Item 706.03 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Radio cases imported with radios; entireties

P75/633	Ford, J. November 13, 1975	Mitsubishi International Corp.	68/32835	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios; entireties
P75/634	Ford, J. November 13, 1975	Mitsui & Co., Ltd.	67/27579	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entries returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Radio cases imported with radios; entireties

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/635	Ford, J. November 13, 1975	Montgomery Ward & Co.	66/18251	Item 791.65 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977	New York Radio cases imported with radios; entireties
P75/636	Ford, J. November 13, 1975	Nomura America Corp.	67/23737	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	San Francisco Radio cases imported with radios; entireties

P75/637	Ford, J. November 13, 1975	Nomura (America) Corp.	68/35384	Item 706.08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios; entireties
P75/638	Ford. J. November 13, 1975	North American Foreign Trading Corp.	65/24209	Item 706. 08 20%	No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidation void; action premature and dismissed; entry returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Radio cases imported with radios; entireties

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/639	Boe, C. J. November 18, 1975	F. B. Vandegrift & Co., Inc.	73-8-02218	Item 737.20 17.5%	Item 737.20 17.5% (dolls) Item 772.97 8.5% (ornaments) Separate values are 55¢ per doz. arts. (dolls) and $1.97 per doz. arts. (ornaments), net packed, on basis of export value	Agreed statement of facts	Philadelphia 3 small hanging Santa Claus dolls and plastic Christmas ornaments; not entireties
P75/640	Boe, C. J. November 19, 1975	S. S. Kresge Co.	73-11-03070	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P75/641	Boe, C. J. November 19, 1975	Standard Commodities Import and Export Co.	70/24521, etc.	Item 774.60 13.5% or 11.5%	Item 692.27 6.5% or 5.5%	Agreed statement of facts	Los Angeles Gearshift boots in c.v. of rubber
P75/642	Watson, J. November 19, 1975	Volvo, Inc.	74-1-00297	Item 409.00 3.5¢ per lb. + 22.5%	Item 405.25 1.4¢ per lb. + 9%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New York Benzenoid alkyd resin paints
P75/643	Newman, J. November 19, 1975	Fedtro, Inc.	68/36468, etc.	Item 682.60 15% or 12%	Item 688.40 11.5% or 9%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers

P75/644	Watson, J. November 20, 1975	J. E. Bernard & Co., Inc.	70/64153(B)	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc., in c.v. of plastic
P75/645	Watson, J. November 20, 1975	Chadwick-Miller Importers, Inc., et al.	70/63998, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Boston Artificial flowers, etc., in c.v. of plastic
P75/646	Watson, J. November 20, 1975	Reliance Trading Corp. of Ill. et al.	69/18312, etc.	Item 748.20 28%	Item 774.60 17%*	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc., in c.v. of plastic
P75/647	Watson, J. November 20, 1975	Reliance Trading Corp. of America et al.	69/30244, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc., in c.v. of plastic
P75/648	Boe, C.J. November 25, 1975	Kurt S. Adler, Inc.	67/82333, etc.	Item 653.40 19%	Item 688.40 11.5%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified

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P75/649	Boe, C.J. November 25, 1975	Fedtro, Inc.	68/8751, etc.	Item 684.70 15% (items marked "A" and "B")	Item 686.10 12.5% (items marked "A") Item 685.20 10% (items marked "B") Appraisements and liquidations as entirety invalid; regional commissioner to take further administrative action	Agreed statement of facts	New York Model P-L listening device (items marked "A"); earphones (items marked "B"); not entireties
P75/650	Watson, J. November 25, 1975	Kurt S. Adler, Inc.	68/30848, etc.	Item 653.39 19%	Item 688.40 10% or 9%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified
P75/651	Watson, J. November 25, 1975	Kurt S. Adler, Inc.	69/313, etc.	Item 653.40 or 653.39 19%	Item 688.40 11.5%, 9% and 8%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified
P75/652	Watson, J. November 25, 1975	Kurt S. Adler, Inc.	69/3162, etc.	Item 653.39 19%	Item 688.40 10% and 9%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified

P75/653	Richardson, J. November 26, 1975	Texas Instruments, Incorporated	75-3-00757	Item 687.60 6% without allowance under item 807.00	Items 687.60/ 807.00 6%; cost or value of U.S. components (silicon chips) deductible from appraised value of imported transistors	Summary judgment (plaintiff's motion granted; defendant's cross-motion denied)	Dallas-Fort Worth (Houston) American goods returned; MPC 3904 Silect transistors and TIC 44 Power transistors
P75/654	Watson, J. November 26, 1975	Kurt S. Adler, Inc.	68/775, etc.	Item 653.40 19%	Item 688.40 11.5%	Agreed statement of facts	New York "Treetops"; decorative articles for Christmas trees, in c.v. of metal; electrified
P75/655	Richardson, J. December 1, 1975	Amplifone Corporation	69/25405, etc.	Item 685.10 12.5% Item 682.07 11%, 10% or 8.5% Without allowance under item 807.00	As assessed, with allowance under item 807.00 for cost or value of articles marked "A" (fabricated components, the product of U.S.) on invoices	General Instrument Corporation v. U.S. (C.D. 4507; C.A.D. 1128)	Chicago American goods returned; transformers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/656	Newman, J. December 1, 1975	Aimcee Wholesale Corp.	67/66816, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	San Francisco Flatware sets
P75/657	Watson, J. December 2, 1975	M. Adler's Son, Inc., et al.	68/64568, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc., in c.v. of plastics
P75/658	Watson, J. December 2, 1975	Decorative Products, Inc.	73-4-00956	Item 748.20 22% or 21%	Item 774.60 10% or 8.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Laredo Merchandise in c.v. of plastic

P75/659	Maletz, J. December 2, 1975	Gambles Import Corp.	72-10-02179	Item 737.40 24%	Item 685.23 11%	U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	Los Angeles Stuffed animals containin, solid-state (tubeless) radio receivers
P75/660	Newman, J. December 2, 1975	Aimcee Wholesale Corp.	66/75718	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 Appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	San Francisco Flatwear sets
P75/661	Watson, J. December 3, 1975	Pacific Coast Commercial	72-7-01560, etc.	Item 748.20 26.5%, 25%, 23.5% or 22%	Item 774.60 15%, 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v., of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/662	Newman, J. December 3, 1975	Metasco, Inc.	66/51670	Items 651.75/ 927.54 60%	Items 651.75/ 650.41 1¢ ea. + 17.5%; the specific portion of said rate of duty being applied once against each tool, knife, fork, spoon, or other utensil in the set	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961) National Silver Company v. U.S. (C.D. 4582)	New York Flatware sets
P75/663	Newman, J. December 9, 1975	Hancock Gross, Inc. Davies Turner & Co.	65/2629	Item 657.20 19%	Item 653.95 17%	Agreed statement of facts	Philadelphia Sprays of a type used for household, table or kitchen use, wholly or in c.v. of iron or steel
P75/664	Watson, J. December 16, 1975	J. I. Case Company	75-5-01380	Item 664.05 5%	Item 692.30 Free of duty	Agreed statement of facts	Norfolk Parts of tractors commercially used in agriculture
P75/665	Watson, J. December 16, 1975	Mego Corp.	70/60332	Item 737.90 31%	Item 737.55 18.5%	Agreed statement of facts	New York Toy alphabet building blocks
P75/666	Watson, J. December 16, 1975	Tragacanth Importing Corp.	73-9-02515	Item 432.00 6%	Item 188.38 Free of duty	Judgment on the pleadings	Philadelphia "Goma de Garrofin 'Tragacom HG-2' " (locust bean gum)

P75/667	Newman, J. December 16, 1975	National Silver Co.	67/17079	Item 927.53 3¢ ea. + 67.5%	Item 650.11 or 650.41 1¢ ea. + 17.5%	National Silver Company v. U.S. (C.D. 4582)	New York Stainless steel flatware (knives and forks)
P75/668	Watson, J. December 17, 1975	New York Merchandise Co., Inc.	68/31409, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic
P75/669	Watson, J. December 17, 1975	Norman Industries, Inc.	72-5-01190	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporaet al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles; New York Merchandise in c.v. of plastic
P75/670	Richardson, J. December 18, 1975	United China & Glass Company	69/18196, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 Appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	New Orleans Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/671	Watson, J. December 18, 1975	Interchemical Corp. et al.	68/16530, etc.	Item 409.00 45% + 7¢ per lb.; or 40% + 6.3¢ per lb.	Item 405.25 18% + 2.8¢ per lb.; or 16% + 2.5¢ per lb.	Volkswagen of America, Inc. v. U.S. (C.D. 4348, aff'd C.A.D. 1115)	New York Benzenoid alkyd resin paints
P75/672	Newman, J. December 18, 1975	Matsushita Electric Corp. of America	75-7-01814	Item 685.30 6.5%	Item 678.50 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	Seattle Stereo radio phonograph w/8-track player
P75/673	Newman, J. December 18, 1975	Stanley Roberts, Inc.	65/12832	Items 651.75/ 927.53 82.575%	Items 651.75/ 650.49 At highest compound rate applicable to any article in sets (1¢ ea. + 17.5%, forks), the specific portion of the compound rate being applied once to each article in sets	U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068) Import Associates of America et al. (C.A.D. 961)	New York Sets of knives, forks and spoons

P75/674	Newman, J. December 18, 1975	Webcor Electronics, a/k/a Webcor Electronics, Division of U.S. Industries, Inc.	72-8-02234	Item 685.30 8% or 6.5%	Item 678.50 6% or 5%	Judgment on the pleadings	New York WFX 257 AM/FM/MPX stereo receiver with 8-track stereo tape player; 12-8300 AM/FM/MPX stereo receiver with 8-track player
P75/675	Boe, C. J. December 22, 1975	The Showeray Corp.	73-7-01017, etc.	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Vinyl shopping bags, vinyl bags, etc.
P75/676	Newman, J. December 23, 1975	The Westbrass Co.	72-11-02355	Item 657.35 0.7¢ per lb. + 9% (showerstalls) Item 680.20 0.7¢ per lb. + 10.5% (shoe strainers)	Item 661.00 7% or 6%	Judgment on the pleadings	Los Angeles Showerstalls in entry 218411; #490 3 ¾" showerstalls in entry 218411; C.P. shoe strainers in entry 137017
P75/677	Ford, J. December 29, 1975	Mill Engineering & Machinery Co.	69/15941	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)
P75/678	Ford, J. December 29, 1975	Mill Engineering & Machinery Co.	69/15942	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/679	Ford, J. December 29, 1975	Mill Engineering & Machinery Co.	69/15943	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)
P75/680	Watson, J. December 29, 1975	Robert E. Landweer & Co.	73-4-01103-8	Item 138.00 17.5%	Item 136.91 1.75¢ per lb.	Judgment on the pleadings General Freight Services, Inc., a/c Lamb-Weston, Inc., et al. v. U.S. (C.D. 4390)	Seattle Frozen onions
P75/681	Ford, J. December 30, 1975	Mill Engineering & Machinery Co.	69/15940	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)
P75/682	Ford, J. December 30, 1975	Mill Engineering & Machinery Co.	69/15944	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)
P75/683	Ford, J. December 30, 1975	Mill Engineering & Machinery Co.	69/15945	Item 680.90 19%	Item 680.60 3%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)

P75/684	Ford, J. December 30, 1975	Mill Engineering & Machinery Co.	69/26173	Item 680.90 19%	Item 680.60 2.5%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389).	Philadelphia Chilled roll bodies (nonmalleable cast-iron rollers for machines)
P75/685	Landis, J. December 30, 1975	Manca, Inc.	73-11-03228, etc.	Item 708.73 22.5%	Item 708.80 15%	Olympus Corp. of America v. U.S. (C.D. 4538)	New York Various parts of microscopes
P75/686	Watson, J. December 30, 1975	Rye Sound Corp.	71-7-00536	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/687	Newman, J. December 30, 1975	Hancock Gross, Inc.	67/71658, etc.	Item 657.80 19% (as entireties)	Merchandise not entireties; should have been severed for appraisement and tariff classification purposes; appraisements invalid and void; liquidations premature; protests untimely and dismissed; entries returned to district director for appropriate administrative action	Agreed statement of facts	Philadelphia Kitchen sink sprays consisting of (1) a spray head properly classifiable under item 654.20; and (2) a hose and reducer properly classifiable under item 772.65

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/688	Newman, J. December 30, 1975	Stanley Roberts, Inc.	65/12813	Items 651.75/ 927.53 82.58%	Items 651.75/ 650.49 At highest compound rate applicable to any article in sets (1¢ ea.+ 17.5%, forks), the specific portion of the compound rate being applied once to each article in sets	U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068) Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Sets of knives, forks and spoons

ABSTRACTS OF CUSTOMS COURT DECISIONS

Reappraisements

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/160	Newman, J. July 8, 1975	Mitsubishi International Corp.	R62/5118, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Los Angeles Footwear
R75/161	Newman, J July 8, 1975	Mitsubishi International Corp.	R63/693, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Los Angeles Footwear
[*See P75/408]							

*See P75/408 (7/9/75) for abstract of decision in *The Florsheim Shoe Co., etc.*, Court No. 72-2-00282 (Chicago), which determined, in addition to the proper classification of buffalo leather, the proper foreign value for calf upper leather.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/162	Newman, J. July 9, 1975	Mitsubishi International Corp.	R62/3091, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Los Angeles Footwear
R75/163	Newman, J. July 9, 1975	Mitsubishi International Corp.	R62/11437, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Los Angeles Footwear
R75/164	Watson, J. July 10, 1975	Banner Gelatin Products Corp.	74-6-01523	American selling price	$18.50 per kilo, net packed Action dismissed as to entry No. 214022	Agreed statement of facts	Los Angeles dl Alpha Tocophery Acetate vitamins
R75/165	Newman, J. July 14, 1975	The Florsheim Shoe Co.	72-2-00404	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather

R75/166	Newman, J. July 14, 1975	Mitsubishi International Corp.	R61/0319, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Los Angeles Footwear
R75/167	Newman, J. July 15, 1975	Lasco	R62/10676, etc.	American selling price	As set forth in schedule B, attached to decision and judgment	Agreed statement of facts	New York Footwear
R75/168	Newman, J. July 15, 1975	Lasco et al.	R62/8599, etc.	American selling price	As set forth in schedule B, attached to decision and judgment	Agreed statement of facts	New York Footwear
R75/169	Re, J. July 18, 1975	Pacific Wood Products Co.	R60/12737	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R75/170	Re, J. July 18, 1975	Pacific Wood Product Co. et al.	R61/24081, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R75/171	Re, J. July 18, 1975	Wood Mosaic Industries, Inc.	R65/2294, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/172	Newman, J. July 22, 1975	B&K Instruments, Inc.	R67/10959, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts
R75/173	Re, J. July 22, 1975	Export Pacific	R58/11641	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R75/174	Re, J. July 22, 1975	R. W. Smith	R58/7066, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/175	Re, J. July 22, 1975	United States Plywood Corp.	R60/1264	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R75/176	Re, J. July 23, 1975	Balfour, Guthrie Co., Ltd., et al.	R64/3621, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R75/177	Maletz, J. July 28, 1975	F. W. Myers & Co., Inc.	R66/6812, etc.	Export value	$8.49 (2″); $8.06 (1¾″) (in U.S. currency per 100′ net packed)	U.S. v. F. W. Myers & Co., Inc. (A.R.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing
R75/178	Maletz, J. July 28, 1975	Seaway Importing Company	R63/4020	Export value	$7.80 (IEH/6 boot) and $6.60 (HIB/12 boot) per pair, net packed	Agreed statement of facts	San Francisco Olive green colored synthetic rubber hip boots with knee harnesses
R75/179	Re, J. July 28, 1975	Daiichi Bussan Kaisha, Ltd., et al.	R58/27680, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R75/180	Re, J. July 28, 1975	National Carloading Corp.	R59/4133, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/181	Re, J. July 28, 1975	Toyomenka, Inc.	R59/2601, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/182	Newman, J. July 29, 1975	New York Merchandise Co., Inc.	R61/3218, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (per Pair)"	Agreed statement of facts	San Diego Footwear
R75/183	Re, J. July 29, 1975	Atkins, Kroll & Co. et al.	R58/1411, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/184	Re, J. July 29, 1975	J. Wm. Back Co. et al.	R58/20578, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/185	Re, J. July 29, 1975	M. S. Cowen	296094-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R75/186	Re, J. July 29, 1975	B. A. McKenzie & Co., Inc., et al.	281644-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R75/187	Re, J. July 29, 1975	R. W. Smith et al.	R58/28678, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/188	Re, J. July 29, 1975	United States Plywood Corp.	R58/1454, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R75/189	Watson, J. July 30, 1975	Coats & Clark, Inc.	R68/11543, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburg) Dynacast Model A-1 and A-2 high speed automatic die casting machines and various parts
R75/190	Newman, J. July 30, 1975	Adler Business Machines	74-11-03240	Foreign value	$83.36 each, packed	Agreed statement of facts	New York Mark 12 adding machines
R75/191	Newman, J. July 30, 1975	B & K Instruments, Inc.	R66/23046, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoice as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts
R75/192	Newman, J. July 30, 1975	B & K Instruments, Inc.	R67/8681, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/193	Newman, J. July 30, 1975	B & K Instruments, Inc.	R68/12876, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment.	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts
R75/194	Newman, J. July 30, 1975	B & K Instruments, Inc.	R69/4479, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts
R75/195	Newman, J. July 30, 1975	B & K Instruments, Inc.	R69/5075, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts

				saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment			
R75/196	Newman, J. July 30, 1975	B & K Instruments, Inc.	R70/4734, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical Instruments and parts
R75/197	Newman, J. July 30, 1975	Morris Friedman	R60/16134	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value"	Agreed statement of facts	Philadelphia Footwear
R75/198	Newman, J. July 30, 1975	Morris Friedman	R61/13875, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment in column designated "Claimed Value"	Agreed statement of facts	Philadelphia Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/199	Watson, J. August 5, 1975	A & A Trading Corp.	74-3-00616	Export value: Appraised values less amounts included as commissions	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All articles imported under subject entries which were appraised at values including an amount for commission
R75/200	Newman, J. August 5, 1975	Adorence Co., Inc., et al.	73-5-01251, etc.	Export value	Indicated in column marked "Claimed Export Value Per Dozen" in schedule attached to decision and judgment	Agreed statement of facts	New York Various articles of wearing apparel
R75/201	Newman, J. August 5, 1975	Mitsubishi International Corp.	R61/3002	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Wilmington, N.C. Footwear
R75/202	Newman, J. August 5, 1975	Stone & Downer Co.	R59/10623, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value", for each article	Agreed statement of facts	Boston Footwear

R75/203	Richardson, J. August 6, 1975	F & D Trading Corp.	R65/24719, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/204	Re, J. August 6, 1975	Balfour, Guthrie & Co., Ltd., et al.	R59/18220, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/205	Re, J. August 6, 1975	Biddle Purchasing Co. et al.	R61/6549, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/206	Re, J. August 6, 1975	Biddle Purchasing Co.	R61/13129	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R75/207	Re, J. August 6, 1975	Getz Bros. & Co. et al.	284899-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927	Houston Japanese plywood
R75/208	Re, J. August 6, 1975	United States Plywood Corp.	R59/7274, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R75/209	Re, J. August 6, 1975	United States Plywood Corp.	R60/58, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R75/210	Re, J. August 6, 1975	United States Plywood Corp.	R60/942	Export value: Net appraised value less 7¼, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	REAP NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/211	Re, J. August 6, 1975	Wood Mosaic Corp.	R58/18461, etc.	Export value: Net appraised value less 7¼, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R75/212	Re, J August 6, 1975	Wood Mosaics Industries, Inc.	R64/18052	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/213	Richardson, J. August 7, 1975	Bryn Mawr Small cars Inc., et al.	R64/2440, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/214	Richardson, J. August 7, 1975	Drexel Motors, Inc.	R67/7301, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed values" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Baltimore Various model Volkswagen automobiles
R75/215	Richardson, J. August 7, 1975	F & D Trading Corp.	R61/12305, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

R75/216	Re, J. August 11, 1975	The A. W. Fenton & Co., Inc., et al.	R65/25106, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts
R75/217	Watson, J. August 12, 1975	Coats & Clark, Inc.	R69/1217, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburgh) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/218	Watson, J. August 12, 1975	Coats & Clark, Inc.	R69/1222, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburgh) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/219	Watson, J. August 12, 1975	F. W. Myers & Co., Inc.	R69/1230, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburgh) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/220	Re, J. August 12, 1975	Uniroyal, Inc., et al.	74-5-01362, etc.	American selling price	$0.22 per lb., packed	Agreed statement of facts	New Orleans Resin (ABS, Kralastic, etc.)
R75/221	Richardson, J. August 13, 1975	Day-Brite Lighting Division of Emerson Electric Co.	R70/7219	Constructed value: Invoice unit value plus 25%	Not stated	Agreed statement of facts	St. Louis Parts or accessories for lighting fixtures
R75/222	Richardson, J. August 20, 1975	L. E. McCullough & Co., a/c Day-Brite Lighting Co.	R70/7168, etc.	Constructed value: Invoice unit value, plus 25%	Not stated	Agreed statement o facts	St. Louis Parts or accessories of lighting fixtures
R75/223	Re, J. August 20, 1975	Wood Mosaic Industries, Inc.	R64/3183, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R75/224	Watson, J. August 21, 1975	A & A Trading Corp.	74-1-00159	Export value: Appraised values less amounts included as commissions	Not stated	A & A Trading Corp. v U.S. (C.D. 4472)	Forth Worth (Houston) All merchandise imported under subject entries
R75/225	Re, J. August 21, 1975	B & K Instruments, Inc.	R66/15320, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical instruments and parts

R75/226	Re, J. August 21, 1975	B & K Instruments, Inc.	R68/7353, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Electrical Instruments and parts
R75/227	Re, J. August 27, 1975	Balfour, Guthrie & Co., Ltd., et al.	R61/3369, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/228	Re, J. August 28, 1975	L. E. McCullough & Co., a/c Day-Brite Lighting Co., et al.	R70/7152, etc.	Constructed value: Invoice unit value, plus, where stated separately on the invoices, the packing charges ("transportation charges"), pro-rated over the number of pieces making up the shipment, plus 25%	Not stated	Agreed statement of facts	St. Louis Parts or accessories for fluorescent lighting fixtures
R75/229	Re, J. August 28, 1975	New York Merchandise Co., Inc.	R62/3759, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Portland, Oreg. Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/230	Re, J. September 3, 1975	Atkins Kroll & Co., Ltd., et al.	R64/3478, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co., et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R75/231	Re, J. September 3, 1975	Balfour Guthrie & Co., Ltd., et al.	R61/20008, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R75/232	Re, J. September 3, 1975	Balfour, Guthrie & Co., Ltd., et al.	R64/3465, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R75/233	Re, J. September 3, 1975	W. J. Byrnes & Co. of N.Y., Inc.	R60/16270, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R75/234	Re, J. September 3, 1975	Dant & Russell, Inc., et al.	R62/686, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R75/235	Re, J. September 3, 1975	The East Asiatic Co., Inc., et al.	R64/3421, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R75/236	Re, J. September 3, 1975	Humphrey & MacGregor, Inc.	R58/10085	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R75/237	Re, J. September 3, 1975	Hunter Trading Corp.	R64/3435, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R75/238	Re, J. September 3, 1975	Toyomenka, Inc.	R58/10396, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R75/239	Re, J. September 3, 1975	United States Plywood Corp.	R64/3362, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/240	Re, J. September 3, 1975	United States Plywood Corp.	R64/3425, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R75/241	Re, J. September 3, 1975	United States Plywood Corp.	R64/4994, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/242	Re, J. September 4, 1975	B & K Instruments, Inc., et al.	R65/25200, etc.	Export value: Invoice unit prices less, where applicable, items specified on invoices as saved packing, for merchandise specified in column headed "Items Contested" on schedule, attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Instruments and parts
R75/243	Re, J. September 4, 1975	The A. W. Fenton Co., Inc.	R63/1850, etc.	Export value: Invoice unit prices less, where applicable, a proportionate part of the items specified on invoices as saved packing, as set forth in schedule B, attached to decision and judgment, for merchandise specified in column headed "Items Contested" on said schedule	Not stated	Agreed statement of facts	Cleveland Instruments and parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/244	Maletz, J. September 8, 1975	Import-Export Corp. of Florida et al.	73-2-00518,	Export value	Appropriate value listed on schedule, attached to decision and judgment, in column designated "claimed value (per piece)"	Agreed statement of facts	Miami Wigs
R75/245	Re, J. September 8, 1975	The A. W. Fenton & Co., Inc.	R63/1847, etc.	Export value: Invoiced unit prices less, where applicable, a proportionate part of the items specified on invoices as saved packing, as set forth in schedule B, attached to decision and judgment, for merchandise specified in column headed "Items Contested" on said schedule	Not stated	Agreed statement of facts	Cleveland Instruments and parts
R75/246	Richardson, J. September 9, 1975	Denric Trading Corp. et al.	R66/7610, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/247	Re, J. September 9, 1975	W. J. Byrnes & Co. of L.A., Inc.	R59/219, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R75/248	Re, J. September 10, 1975	W. J. Byrnes & Co. of L.A., Inc.	R58/2318, etc.	Export value; Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/249	Re, J. September 10, 1975	Chas. Kurz Co. et al.	R64/10164, etc.	Export value; Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R75/250	Re, J. September 10, 1975	Wood Mosaic Industries, Inc.	R64/3441	Export value; Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R75/251	Richardson, J. September 11, 1975	Carriage Trade, Ltd.	R66/3291, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/252	Richardson, J. September 11, 1975	Madison Imports Corp.	R66/5506, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Marks)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/253	Richardson, J. September 11, 1975	Pacific Airlines, Inc.	R69/5501	Constructed value	$25,775.80 in Canadian funds, the cost to the importer of repairs performed in Canada	Agreed statement of facts	San Francisco Certain non-military aircraft engines

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/254	Ford, J. September 16, 1975	M.G. Maher & Co., Inc., a/c Day-Brite Lighting Division of Emerson Electric Co.	71-9-01161	Constructed value: Invoice value, plus a packing charge ("transportation charges"), shown separately on invoice, prorated over the number of pieces making up the shipment, plus 25%	Not stated	Agreed statemen of facts	New Orleans Hallmark enclosure; part or accessory for fluorescent lighting fixtures
R75/255	Ford, J. September 17, 1975	P. W. Bellingall, Inc., a/c Day-Brite Lighting	75-1-00068	Constructed value: Invoice unit values, plus, where stated separately on invoices, packing charges ("transportation charges"), prorated over number of pieces making up shipment, plus 25%	Not stated	Agreed statement of facts	San Francisco Plastic enclosures; parts or accessories for fluorescent lighting fixtures
R75/256	Ford, J. September 22, 1975	The A. W. Fenton Co., Inc., et al.	R63/1853, etc.	Export value: At invoice unit prices less, where included in invoice unit prices, a proportionate part of ocean or air freight and insurance as shown on invoices, and plus, where not included in invoice unit prices, a proportionate part of cost of packing as shown on invoices	Not stated	Agreed statement of facts	Cleveland Instruments and parts

				invoices			
R75/257	Watson, J. September 22, 1975	A & A International (Div. of Tandy Corp.)	74-1-00085	Export value: Appraised values less amounts included as commissions	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Dallas (Houston) All merchandise imported under subject entries
R75/258	Ford, J. September 23, 1975	The Florsheim Shoe Co., Div. of Interco., Inc.	72-1-00229, etc.	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather
R75/259	Maletz, J. September 23, 1975	F. W. Myers & Co., Inc.	R66/5012, etc.	Export value: Invoiced unit values, net, packed	Not stated	U.S. v. F. W. Myers & Co., Inc. (A.R.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing
R75/260	Maletz, J. September 23, 1975	F. W. Myers & Co., Inc.	R66/13114, etc.	Export value: Invoiced unit values, net, packed	Not stated	U.S. v. F. W. Myers & Co., Inc. (A.R.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing
R75/261	Maletz, J. September 23, 1975	F. W. Myers & Co., Inc.	R67/4147, etc.	Export value: Invoiced unit values, net, packed	Not stated	U.S. v. F. W. Myers & Co., Inc. (A.R.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing
R75/262	Ford, J. September 24, 1975	Robert W. McCoy, a/c Day-Brite Lighting	73-6-01339	Constructed value: Invoice unit values, plus, where stated separately on invoices, packing charges ("transportation charges"), prorated over the number of pieces making up shipment, plus 25%	Not stated	Agreed statement of facts	Jacksonville (Tampa) Plastic enclosures; parts or accessories for fluorescent lighting fixtures

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/263	Ford, J. September 29, 1975	Mitsubishi International Corp.	R62/6984, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair net packed	Agreed statement of facts	San Francisco Footwear
R75/264	Watson, J. September 29, 1975	Coats & Clark, Inc.	R68/11552, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburg) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/265	Watson, J. September 29, 1975	Coats & Clark, Inc.	71-8-00850, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburg) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/266	Ford, J. September 30, 1975	The A. W. Fenton Co., Inc.	R63/2851, etc.	Export value: Invoiced unit prices less, where applicable a proportionate part of the items specified on the invoices as saved packing, as set forth in schedule B, attached to decision and judgment	Not stated	Agreed statement of facts	Cleveland Instruments and parts

R75/267	Ford, J. September 30, 1975	Medi-Computer Corp.	73-9-02707	Export value: Invoice price	Not stated	Agreed statement of facts	New York Parts of an automatic analytical system known as "Multi-Channel Systems"
R75/268	Ford, J. October 1, 1975	Medi-Computer Corp.	74-3-00744	Export value: Invoice price	Not stated	Agreed statement of facts	New York Parts of an automatic analytical system known as "Multi-Channel Systems"
R75/269	Ford, J. October 1, 1975	Medi-Computer Corp.	71-8-02065	Export value: Invoice price	Not stated	Agreed statement of facts	Buffalo-Niagara Falls "Multi-Channel Systems", various components of
R75/270	Watson, J. October 1, 1975	Coats & Clark, Inc.	72-2-00190, etc.	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc. v. U.S. (C.D. 4581)	Detroit Dymcast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/271	Ford, J. October 8, 1975	Henry Pollack, Inc.	R62/4070, etc.	American selling price	Set forth under column "Unit Value Per Pair" on schedule attached to decision and judgment	Agreed statement of facts	New York Footwear (basketball shoes, sneakers, tennis shoes, etc.)

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/272	Watson, J. October 8, 1975	International Artware Corp.	72-2-00340	Export value: Invoiced ex-factory unit price net packed plus 10%	Not stated	Summary judgment for defendant Plaintiff claimed, inter alia, that liquidation of certain merchandise "increased by 10%" was contrary to the decision and judgment of 6/23/70 (64 Cust. Ct. 993, Abs. R70/170) and that certain other merchandise was erroneously "increased on liquidation by 10% over the invoice price" Judgment entered for defendant; protest overruled; action dismissed; liquidation affirmed	Cleveland Miscellaneous articles
R75/273	Ford, J. October 8, 1975	Spiegel, Inc.	73-7-01886	Constructed value	For each imported article, net, packed: Radio, $17.28; earphones, $0.06; batteries, $0.22	Judgment on the pleadings	Chicago Radio, earphones, batteries
R75/274	Ford, J. October 8, 1975	Trans-American Electronics International Co., Inc.	73-7-01891	Constructed value: Invoiced unit values net, packed	Not stated	Judgment on the pleadings	Chicago Transistor radios (chassis)

R75/275	Boe, C. J. October 9, 1975	The Florsheim Shoe Company, Division Interco Incorporated	71-8-00036	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather
R75/276	Boe, C.J. October 15, 1975	The Florsheim Shoe Company	R70/2453, etc.	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather
R75/277	Boe, C.J. October 16, 1975	B&K Instruments, Inc.	R68/12874	Export value: Invoice unit price net, packed	Not stated	Agreed statement of facts	Cleveland Two #2112 audio frequency spectrometers
R75/278	Boe, C.J. October 16, 1975	Mitsubishi International Corp.	R61/19618, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New Orleans Footwear
R75/279	Richardson, J. October 16, 1975	Descoware Corp.	R61/18341	Foreign value	Unit prices indicated on price list, attached to decision and judgment, less 40% plus 10% sales tax plus packing as noted on invoices, in Belgium Francs	Descoware Corp. v. U.S. (R.D. 10158)	Los Angeles Enamel cast iron cooking ware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/280	Richardson, J. October 28, 1975	H. M. Young Associates, Inc.	R70/279, etc.	Constructed value: Invoice prices	Not stated	H. M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York Tapes Webbing 3¾" 7010; Cotton Waistband-Elastic 7010 3¾"; Cotton Elastic Waistband 7010 3¾", etc.
R75/281	Boe, C. J. October 29, 1975	B & K Instruments, Inc.	73-9-02588	Export value: Invoice unit prices net, packed	Not stated	Agreed statement of facts	Cleveland Electrical instruments
R75/282	Richardson, J. October 29, 1975	H. M. Young Associates, Inc.	R61/20789, etc.	Constructed value: Invoice prices	Not stated	H. M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York Tapes Webbing 3¾" 7010; Cotton Waistband-Elastic 7010 3¾"; Cotton Elastic Waistband 7010 3¾", etc.
R75/283	Richardson, J. November 5, 1975	Snuffy Smith Motors, Inc.	R61/6579, etc.	Cost of production	Listed under column designated "Claimed Values" in schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Jacksonville (Tampa) Americanized Volkswagen automobiles
R75/284	Boe, C. J. November 10, 1975	J. M. Rodgers Co., Inc.	R60/1285, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear

R75/285	Boe, C. J. November 10, 1975	Thalson Co.	R62/13732	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	San Francisco Footwear
R75/286	Ford, J. November 10, 1975	Gosho Trading Co., Inc.	R69/3699	Constructed value	F.o.b. prices on special customs invoice: $2.07 ea. (radio receivers), 3¢ ea. (earphones), 10¢ ea. (batteries), net packed	Judgment on the pleadings	New York Solid-state (tubeless) radio receivers, together with batteries and/or earphones
R75/287	Ford, J. November 10, 1975	Gosho Trading Co., Inc.	R69/3700	Constructed value	F.o.b. prices on special customs invoice: $2.45 ea. (radio receivers), 5¢ ea. (earphones), 10¢ ea. (batteries), net packed	Judgment on the pleadings	New York Solid-state (tubeless) radio receivers, together with batteries and/or earphones
R75/288	Boe, C. J. November 11, 1975	J. M. Rodgers Co., Inc.	R59/6648, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/289	Boe, C. J. November 11, 1975	J. M. Rodgers Co., Inc.	R59/7538, etc.	American selling price	$2.46 less 6% for men's, $2.42 less 6% for boys', and $2.37 less 6% for youths' basketball shoes	Agreed statement of facts	New York Footwear
R75/290	Boe, C. J. November 11, 1975	J. M. Rodgers Co., Inc.	R60/19076, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/291	Richardson, J. November 11, 1975	G. L. Smith	R61/23415, etc.	Cost of production	Listed under column designated "Claimed Values" in schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Jacksonville (Tampa) Americanized Volkswagen automobiles
R75/292	Richardson, J. November 11, 1975	Snuffy Smith Motors, Inc.	R61/6590, etc.	Cost of production	Listed under column designated "Claimed Values" in schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Jacksonville (Tampa) Americanized Volkswagen automobiles
R75/293	Watson, J. November 11, 1975	Descoware Corp.	R61/18344, etc.	Foreign value	Unit prices indicated on price list, attached to decision and judgment, less 40%, plus 10% sales tax, plus packing as noted on invoices, in Belgium Francs	Descoware Corp. v. U.S. (R.D. 10158)	Los Angeles Enamel cast iron cooking ware
R75/294	Boe, C. J. November 12, 1975	Mitsubishi International Corp.	R62/6584-S, etc.	Claim: Appraisement of four entries not completed as written notices, required by § 501, TA of 1930, were not issued; appeals premature	Held: Appeals for reappraisement dismissed as premature; entries returned to district director for appropriate administrative action	Agreed statement of facts	San Francisco Footwear
R75/295	Ford, J. November 12, 1975	F. W. Myers & Co., Inc.	R65/15634	Export value	$8.49 (2" – 18 gauge); $8.06 (1¾" – 18 gauge) (in U.S. currency per 100' net packed)	U.S. v. F. W. Myers & Co., Inc. (A.R.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing

R75/296	Boe, C. J. November 17, 1975	J. M. Rodgers Co., Inc.	R60/20599, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/297	Boe, C. J. November 17, 1975	J. M. Rodgers Co., Inc.	R61/8124, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/298	Boe, C. J. November 18, 1975	J. M. Rodgers Co., Inc.	R61/1552, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/299	Boe, C. J. November 18, 1975	J. M. Rodgers Co., Inc.	R61/3777, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/300	Ford, J. November 19, 1975	Motorola, Inc.	71-11-01867, etc.	Constructed value	Set forth on schedule A, attached to decision and judgment	Agreed statement of facts	Chicago AM/FM radio chassis, transistor radio sets, and radios (with or without accessories)
R75/301	Ford, J. November 19, 1975	Motorola, Inc.	72-12-02598	Constructed value	Set forth on schedule A, attached to decision and judgment	Agreed statement of facts	Chicago AM/FM radio chassis

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/302	Watson, J. November 20, 1975	Descoware Corp.	R60/1536, etc.	Foreign value	Unit prices indicated on price list, attached to decision and judgment, less 40%, plus 10% sales tax, plus packing as noted on invoices, in Belgium Francs	Descoware Corp. v. U.S. (R.D. 10158)	Los Angeles Enamel cast-iron cooking ware
R75/303	Richardson, J. November 25, 1975	F & D Trading Corp.	R61/12303, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/304	Boe, C.J. November 26, 1975	J. M. Rodgers Co., Inc.	R60/21783, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/305	Richardson, J. November 26, 1975	F & D Trading Corp.	R65/24701, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

R75/306	Richardson, J. November 26, 1975	F & D Trading Corp.	R67/14220, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1039)	Baltimore Various model Volkswagen automobiles
R75/307	Watson, J. December 2, 1975	Coats & Clark, Inc.	75-7-01739	Constructed value: Invoice unit value specified on commercial invoice	Not stated	Coats & Clark, Inc., v. U.S. (C.D. 4581)	Champlain-Rouses Point (Ogdensburg) Dynacast model A-1 and A-2 high speed automatic die casting machines and various parts
R75/308	Watson, J. December 2, 1975	Shell Chemical Co.	R69/2553, etc.	American selling price	$1.25 per lb., net packed	Agreed statement of facts	San Francisco Meta-dichlorobenzene
R75/309	Ford, J. December 3, 1975	Clinton Swan Clothes, Inc.	73-1-00150	Export value: Invoice unit values per yard, net packed	Not stated	Agreed statement of facts	New York Cotton corduroy
R75/310	Re, J. December 3, 1975	Getz Bros. & Co.	283004-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R75/311	Boe, C.J. December 8, 1975	Florsheim Shoe Co., Div. of Interco.	73-8-02309	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/312	Boe, C.J. December 8, 1975	The Florsheim Shoe Co., Div. of Interco.	75-2-00468	Foreign value: Appraised unit values less 1% cash discount, packed	Not stated	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather
R75/313	Ford, J. December 9, 1975	Gehrig Hoban & Co., Inc.	R67/17539, etc.	Export value	890, 1054, 1085, 1075, 1180 Swiss francs each, net, packed, respectively, for P1000, P1000N, P1200, P2000, P2000N; 1190 francs, net, packed, for P3	Agreed statement of facts	New York Precision scales
R75/314	Richardson, J. December 9, 1975	G. L. Smith, d/b/a Snuffy Smith Motor Co.	R61/7830, etc.	Cost of production	Listed under column designated "Claimed Values" in schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Jacksonville (Tampa) Americanized Volkswagen automobiles
R75/315	Newman, J. December 9, 1975	Gehrig Hoban & Co., Inc.	R67/18615, etc.	Export value	890, 1054, 1085, 1075, 1180 Swiss francs each, net packed, respectively, for P1000, P1000N, P1200, P2000, P2000N; 1190 francs, net, packed for P3	Agreed statement of facts	New York Precision scales
R75/316	Watson, J. December 16, 1975	Isaac B. Cohen & Sons et al.	R61/22964, etc.	American selling price	Set forth on schedule, attached to decision and judgment, under caption claimed values per pair	Agreed statement of facts	New York Footwear

R75/317	Watson, J. December 16, 1975	New York Merchandise Co., Inc.	R61/4271	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/318	Watson, J. December 16, 1975	Henry Pollak, Inc.	R60/13680	American selling price	Set forth under column "Unit Value Per Pair" on schedule "A", attached to decision and judgment	Agreed statement of facts	New York Footwear
R75/319	Re, J. December 16, 1975	M. S. Cowen Co.	R62/12103, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R75/320	Re, J. December 16, 1975	Patrick & Graves	R58/20211, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/321	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R60/19866, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/322	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R61/8526, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/323	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R61/9262, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/324	Watson, J. December 18, 1975	Bruce Duncan Co., Inc., a/c Technical Marketing Associates, Inc.	R62/10709	American selling price	$1.52 less 6% per pair	Agreed statement of facts	Los Angeles Footwear
R75/325	Watson, J. December 18, 1975	Nagara Trading Co., Inc.	R61/20125	American selling price	$4.85 less 6% per pair	Agreed statement of facts	Portland, Oreg. Footwear
R75/326	Watson, J. December 18, 1975	J. M. Rodgers Co., Inc.	R59/10390, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/327	Watson, J. December 18, 1975	J. M. Rodgers Co., Inc.	R61/14363, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear

R75/328	Watson, J. December 22, 1975	Bruce Duncan Co., Inc., a/c Ruby Importing Co.	R61/18134, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/329	Watson, J. December 22, 1975	New York Merchandise Co., Inc.	R62/3561, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/330	Watson, J. December 23, 1975	A & A Trading Corp.	73-4-00042	Export value: Appraised values less amounts described as commission, purchasing agent's commission or buying commission which were included in the appraised values by Customs	Not stated	Judgment on the pleadings	Seattle Merchandise covered by invoices which specify A & A Japan, Ltd.; and A & A Japan, Ltd. or Allied Sales Corp. as having been involved in the transaction
R75/331	Watson, J. December 23, 1975	Bushnell International, Inc., et al.	R68/8009, etc.	Export value: Invoiced ex-factory unit values	Not stated	Bushnell International, Inc. v. U.S. (C.A.D. 1104)	Los Angeles Binoculars and other optical goods and accessories
R75/332	Watson, J. December 23, 1975	Nagara Trading Co. et al.	R60/15295, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/333	Watson, J. December 23, 1975	New York Merchandise Co., Inc.	R60/20782, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/334	Watson, J. December 23, 1975	J. M. Rodgers Co., Inc.	R61/22076, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/335	Watson, J. December 24, 1975	New York Merchandise Co., Inc.	R61/23219, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/336	Watson, J. December 24, 1975	Quon Quon Co.	R62/8847, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear

R75/337	Watson, J. December 29, 1975	Montgomery Ward & Co.	73-10-02882	Constructed value	$13.05 (clock radio exclusive of clock movement portion) $2.81 of which $2.35 represents cost or value of U.S. product and 0.46 represents value of foreign product (clock movement portion)	Judgment on the pleadings	New York AM/FM clock radios
R75/338	Watson, J. December 30, 1975	Boutique Wigs, Inc.	72-9-01948	Export value: Invoice unit value	Not stated	Agreed statement of facts	Miami Wigs, hairpieces, etc.
R75/339	Watson, J. December 30, 1975	International Seaway Trading Corp.	R67/22371	American selling price	Set forth in schedule B, attached to decision and judgment	Agreed statement of facts	San Francisco Footwear
R75/340	Watson, J. December 30, 1975	International Seaway Trading Corp.	R68/2488, etc.	American selling price	Set forth in schedule B, attached to decision and judgment	Agreed statement of facts	Los Angeles Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/341	Watson, J. December 30, 1975	Marubeni Iida (America), Inc.	R61/2285	American selling price	Set forth under column "Unit Value Per Pair" on schedule, attached to decision and judgment	Agreed statement of facts	Portland, Oreg. Footwear
R75/342	Watson, J. December 30, 1975	Mitsui & Co., Ltd.	R62/8624	American selling price	Set forth on schedule, attached to decision and judgment, under caption claimed values per pair	Agreed statement of facts	Boston Footwear
R75/343	Watson, J. December 30, 1975	Nomura (America) Corp. et al.	R61/11067, etc.	American selling price	Set forth under column "Unit Value Per Pair" on schedule, attached to decision and judgment	Agreed statement of facts	Los Angeles Footwear

ABSTRACTS OF CUSTOMS COURT DECISIONS

Valuation Decisions on Remand from Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V75/4	Newman, J. November 20, 1975	The Westbrass Co.	68/54255, etc. (C.D. 4263)	Export value	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Dutiable Value"	Agreed statement of facts	Los Angeles Strainers and bases, metal bases, rubber stoppers (described by style number on schedule)

RULES OF THE UNITED STATES CUSTOMS COURT

Amendments to rules 3.2, 3.4, 3.5, 4.1, 4.5, 4.12, 6.3, 8.1, 10.4, 12.2, 14.6, 14.7, 14.8 and changes in the Summons (CC–S1), Schedule of Protests (CC–S3) and Summons (CC–SA1) forms have been approved by the court. The amended rules, effective October 1, 1975, will read as follows (revised and new language is indicated by underlineation; "[deletion]" is inserted where the omission of words is the only change involved):

RULE 3.2

(b) Summons: Filing by Mail; Date of Filing: For purposes of commencement of an action, a summons sent by registered or certified mail properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of postmark. [new paragraph]

(c) Summons: By Whom Filed: A summons in an action commenced by an individual in his own behalf may be filed by such individual, or by an attorney admitted to practice before this court. A summons in an action commenced by a corporation, partnership or other voluntary association may be filed only by an attorney admitted to practice before this court.

(d) Summons: Number of Copies:

(1) An original and 4 copies of the summons shall be filed with the clerk in an action commenced to contest denial of a protest under section 515 of the Tariff Act of 1930, as amended (19 U.S.C. § 1515, as amended): *Provided*, That when the action includes, as permitted by Rule 3.3(b), protests denied at more than one port of entry, an additional copy of the summons shall be filed at the same time for each such different port of entry.

(2) An original and 5 copies of the summons shall be filed with the clerk in an action commenced to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. § 1516, as amended): *Provided*, That when the action includes entries involving more than one consignee or agent, or more than one port of entry, an additional copy of the summons shall be filed at the same time for each such different consignee or agent and for each such different port of entry.

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(e) Summons: Date of Filing; Motion To Correct:

(1) The records of the clerk, including the date of filing stamped on the summons, or when sent by registered or certified mail the date of postmark, shall be final and conclusive evidence of the date on which a summons was filed unless a motion to correct the record is made and granted pursuant to subparagraph (2) of this paragraph (e).

(2) A party who contends that the effective filing date of a summons should be a date other than the date shown in the records of the clerk may seek a corrective order by motion made pursuant to Rule 4.12, and the court may, upon satisfactory proof that the records of the clerk with respect to the filing date were incorrect, order the record corrected.

[(3) deleted]

(f) Amendment: At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued. [new paragraph]

(g) Summons: Service: Upon filing of a summons it shall be signed by the clerk under the seal of the court and the clerk shall return a copy, together with a receipt for payment of the filing fee, to the person who filed the summons, and shall make service of the summons as prescribed by subparagraphs (1) and (2) of this paragraph (g).

(1) When the United States is an adverse party, the clerk shall make service of the summons: upon the Attorney General, by delivery or by mailing a copy to the Chief, Customs Section, Department of Justice; and upon the Secretary of the Treasury, by delivery or by mailing a copy to the Assistant Chief Counsel for Customs Litigation, Bureau of Customs,* and by delivery or by mailing a copy to the district director for the customs district in which the protest was denied.

(2) When a civil action is commenced to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. § 1516, as amended), the clerk shall also deliver or mail a copy of the summons to the consignee or agent of the consignee involved in each entry which is the subject of the civil action.

(h) Documents Furnished: Upon service of the summons on the appropriate district director, he shall, in accordance with 28 U.S.C. § 2632(f), as amended, forthwith transmit the following items, if they exist, to the court as part of the official record of the civil action:

(1) consumption or other entry;

*Any reference in the Rules of the United States Customs Court to the Bureau of Customs should be understood as a reference to the United States Customs Service.

(2) commercial invoice;
(3) special customs invoice;
(4) copy of protest;
(5) copy of denial of protest in while or in part;
(6) importer's exhibits;
(7) official samples;
(8) any official laboratory reports; and
(9) the summary sheet.

If any of the aforesaid items do not exist in the particular action, an affirmative statement to that effect shall be transmitted as part of the official record.

RULE 3.4

(a) Form and Content [of Summons]: General: * * *

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(3) with respect to each entry of merchandise involved in a denied protest included in the civil action, the port of entry, the entry number, the date of entry, and the date of liquidation;

* * * * * * *

RULE 3.5

(a) Form and Content [of Summons by American Manufacturers, etc.]: General: * * *

* * * * * * *

(3) with respect to each entry of merchandise included in the civil action, the port of entry, the entry number, the date of entry, and the date of liquidation;

* * * * * * *

RULE 4.1

(e) Filing: The filing of pleadings and other papers with the court as required by these rules may be made by delivery or by mailing to the clerk of the court at One Federal Plaza, New York, New York 10007, or, at places other than New York, with his appointed deputy clerk, where such pleadings or other papers relate to an action scheduled to be tried at that place. Filing is completed upon receipt by the clerk or his appointed deputy clerk, except that a pleading or other pa-

per, mailed to the court at New York, shall be deemed filed as of the date of postmark if sent by registered or certified mail properly addressed to the clerk of the court at the aforementioned address, with the proper postage affixed and return receipt requested.

RULE 4.5

(a) General: The complaint in a civil action shall set forth:

(1) a statement of plaintiff's standing in the action;

(2) a statement that the protest was timely filed;

(3) a statement, when appropriate, that all liquidated duties have been paid;

(4) a description of the merchandise involved;

(5) a specification of the contested customs decision or decisions; and

(6) a demand for judgment for the relief to which plaintiff deems himself entitled.

RULE 4.12

(c) Time To Respond: Except as provided in Rules 3.6(b), 14.6(e) and 14.8(e), an objection or response to a contested motion shall be filed within 10 days after service of such motion, except that an objection or response to a dispositive motion, i.e., a motion to dismiss the action, a motion for judgment on the pleadings, and a motion for summary judgment, shall be filed within 30 days after service of such motion. On a dispositive motion the moving party shall have 15 days from the date of service of the objections or response to file a reply.

(d) Briefs; Memoranda; Affidavits: Any brief, memorandum of citations, or affidavit submitted in support of any motion, or in support of any objection or response to a motion, shall be included in or attached to each copy of such motion, objection, or response. [deletion]

(e) Order To Show Cause: An order to show cause to bring on a motion may be granted only upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary. [new paragraph]

RULE 6.3

(a) Availability; Procedures for Use: After an answer is filed, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is the United States or a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

The interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in: *Provided*, That an answering party who elects to have each question retyped prior to having his answer typed in, shall be permitted to do so. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories, not less than 60 days after the service thereof or within such shorter or longer time as the court may allow. The party submitting the interrogatories may move for an order under Rule 6.5 with respect to any objection to or other failure to answer an interrogatory.

RULE 8.1

(a) General Requirements: An action may be submitted at any time without brief or complaint or formal amendment of any prior pleading by filing with the clerk of the court a submission on agreed statement of facts, signed by the parties or their attorneys, together with a proposed decision and judgment. Within 5 days after a proposed submission on agreed statement of facts is filed with the office of the Assistant Attorney General, Civil Division, Department of Justice, the plaintiff shall advise the court in writing as to the date of such filing.

RULE 10.4

(a) Form and Admissibility: In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence applicable in the courts of the United States [deletion]. In any trial, the statute or rule which favors the reception of the evidence governs, and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

RULE 12.2

(b) Mistakes; Inadvertence; Excusable Neglect: On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect. [new paragraph]

(c) Harmless Error: No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in

anything done or omitted by the court or by any of the parties is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. At every stage of the proceeding, the court shall disregard any error or defect which does not affect the substantial rights of the parties.

RULE 14.6

(c) Dismissal for Lack of Prosecution: An action which is not removed from the reserve file within a period of 2 years shall be dismissed for lack of prosecution, and unless the plaintiff has pending a motion for extension of time, the clerk shall enter an order of dismissal without further direction of the court. The applicable 2-year period shall begin to run from the last day of the month in which the action is commenced, and shall end on the last day of the 24th month thereafter.

* * * * * * *

(e) Motion for Extension of Time: For good cause shown, the court may, upon motion, order an extension of the time, beyond the applicable 2-year period, within which an action may remain in the reserve file. Any motion for extension of time shall be filed with the clerk prior to the expiration of the period of time. An objection or response thereto shall be filed within 5 days after service of such motion. No order of dismissal shall be entered under Rule 14.6(c) until the court has acted on the motion. If the motion for extension of time is denied and less than 10 days remain, or the time has expired, for removing such actions from the reserve file pursuant to paragraph (b) of this rule, then the action shall continue to remain in the reserve file for 10 days after the court enters the order denying the extension of time.

RULE 14.7

(a) Suspension of Actions: An action may be suspended pending the final determination of another action (hereinafter referred to as a test case) if it invovles an issue of fact or a question of law which is the same as the issue of fact or question of law involved in such test case. A party to any action who desires to have any action considered as a test case may, after issue has been joined in the test case, serve and file a motion stating the reasons therefor. At the time that a plaintiff serves and files a complaint in an action pursuant to Rule 4.4 it may serve and file a single motion (1) to have said action designated a test case and (2) to suspend actions thereunder, stating the reasons therefor: *Provided*, That the defendant shall file its objection or response to such a motion within 15 days after it has filed its answer to

the complaint pursuant to Rule 4.7. For purposes of this rule, an action may be considered as a test case when an order to that effect is issued by the court after a motion has been served and filed pursuant to this rule or after trial has been commenced or the action submitted to the court for decision. The trial of an action commences when, in open court, the first witness is sworn or evidence is admitted.

* * * * * * *

(e) Effect of Suspension: An order suspending an action shall stay all further proceedings and filing of papers therein, unless the court directs otherwise. [new paragraph]

(f) Removal from Suspension: A suspended action may be removed from suspension by filing (1) a complaint, (2) notice of trial after issue is joined, or (3) submission of the action to the court for decision upon an agreed statement of facts. Upon motion of a party for removal from suspension for the purpose of moving the action toward a final disposition by trial or otherwise, the court may order the removal upon such terms and within such time as it may direct. [new paragraph]

RULE 14.8

(a) Transfer to Suspension Disposition File: When an action is finally determined, dismissed or discontinued, any actions [deletion] suspended thereunder, including actions in which complaints or complaints and answers were filed prior to suspension, shall be transferred to a suspension disposition file.

(b) Removal from Suspension Disposition File: An action may be removed from a suspension disposition file upon: (1) the filing of a motion for removal; or (2) the filing of a complaint or answer subsequent to suspension pursuant to Rule 4.4; or (3) the granting of a motion for consolidation pursuant to Rule 10.3 or for suspension under another action pursuant to Rule 14.7(b); or (4) submission of the action to the court for decision upon an agreed statement of facts pursuant to Rule 8.1 or upon the filing of a dispositive motion; or (5) the filing of a notice of trial pursuant to Rule 9.1. Such motion for removal shall be made solely for the purpose of moving the action toward a final disposition by trial or otherwise, upon such terms and within such time as the court may direct. The motion shall specify the further proceedings desired to be taken and shall be submitted together with a proposed order specifying such further proceedings. A motion for removal or any other motion made pursuant to this paragraph shall be filed no later than 15 days prior to the expiration of the time within which the action may remain in the suspension disposition file. An objection or response to a motion for removal shall be filed within 10 days after service of the motion. An objection

or response to a dispositive motion shall be filed within 30 days. No order of dismissal shall be entered under Rule 14.8(c) until the court has acted upon the motion made pursuant to this paragraph. If the motion is denied and less than 10 days remain, or the time has expired, for removing the action from the suspension disposition file, then the action shall continue to remain in the suspension disposition file for 10 days after the court enters the order denying the motion.

(c) Dismissal for Lack of Prosecution: An action which is not removed from the suspension disposition file within a fixed period of time shall be dismissed for lack of prosecution, and unless the plaintiff has pending a motion for extension of time, the clerk shall enter an order of dismissal without further direction of the court. The period of time, not to exceed 18 months, within which an action may remain in the suspension disposition file shall be fixed by the judge to whom the action has been assigned, or by the judge who decided the action under which the actions transferred to the suspension disposition file were suspended.

* * * * * * *

(e) Motion for Extension of Time: For good cause shown, the court may, upon motion, order an extension of time beyond the applicable fixed period of time within which an action may remain in the suspension disposition file. A motion for extension of time shall be filed with the clerk prior to the expiration of the period of time. An objection or response thereto shall be filed within 5 days after service of such motion. No order of dismissal shall be entered under Rule 14.8(c) until the court has acted on the motion. If the motion for extension of time is denied and less than 10 days remain, or the time has expired, for removing said actions from the suspension disposition file pursuant to paragraph (b) of this rule, then the action shall continue to remain in the suspension disposition file for 10 days after the court enters the order denying the extension of time.

FORMS

Summons (CC–S1): After each of the two "Date of Entry" columns add a new column headed "Date of Liquidation".

Schedule of Protests (CC–S3): Add a new last column headed "Date of Liquidation".

Summons (CC–SA1): After "Date of Entry" column add a new column headed "Date of Liquidation".

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A certain DC–9 jet airplane was classified as "airplanes," under item 694.40, Tariff Schedules of the United States, at the duty rate of 9 *per centum ad valorem* which was assessed upon the full value of the plane. Plaintiff claimed that the imported airplane should be dutiable at the assessed rate only upon the value of the plane's wings and empennage (tail section), the remaining components of the plane being of American manufacture, pursuant to TSUS items 804.00 and 800.00, and also to be subject to a drawback allowance following the subsequent exportation of the plane to West Germany.

The court held that in the absence of compliance by the importer with the applicable regulations governing free entry of American goods reimported, relief was not available to the importer as claimed under TSUS items 804.00 and 800.00, under the doctrine of long standing administrative practice, and under the doctrine of estoppel; and that the Government's motion made at the trial to dismiss the drawback claim must be granted since the protest was premature as to that claim, having been filed before final liquidation of the drawback entry. *McDonnell Douglas Corp.*, C.D. 4604 ---------- 6

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BASEBALL GLOVES
GLOVES, VINYL BASEBALL

Certain merchandise invoiced as (1) a "Vinyl sponge leather glove" and (2) a "Vinyl leather boxing glove" was classified as other toys, not specially provided for, under item 737.90, Tariff Schedules of the United States. Plaintiff claimed that the "Vinyl sponge leather glove" was properly classifiable as baseball gloves, under TSUS item 734.54, or, alternatively, as "other gloves * * * specially designed for use in sports," under TSUS item 735.05, or as game, sport, athletic or playground equipment, under TSUS item 735.20. Plaintiff claimed alternatively that the "Vinyl leather boxing glove" was properly classifiable under TSUS item 735.05 as boxing gloves, or under TSUS item 735.20.

On the record presented, the court held: (1) The imported "Vinyl sponge leather glove" was similar in all material respects to the junior edition baseball gloves in the incorporated case of *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969), and as such was properly classifiable as a baseball glove under item 734.54. (2) The imported "Vinyl leather boxing glove" was a junior edition boxing glove and was therefore properly classifiable under item 735.05 as a boxing glove. Accordingly, the plaintiff's claims were sustained. *Mego Corp.*, C.D. 4614 108

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Certain integral shaft bearings were classified as parts of pumps for liquids under item 660.90, Tariff Schedules of the United States. Plaintiff claimed that the bearings were properly classifiable either as parts of piston-type engines, under TSUS item 660.52, or as parts of motor vehicles, under TSUS item 692.25. Defendant alternatively claimed that said bearings were classifiable as ball or roller bearings, under TSUS item 680.35. The original decision of the court holding that the imported bearings were properly classified as pump parts under TSUS item 660.90, 71 Cust. Ct. 1, C.D. 4461 (1973), was reversed and remanded, 62 CCPA 60, C.A.D. 1146 (1975).

On remand, the court upon consideration of the argument, the record in the case, and the pertinent legislative history, held that the imported integral shaft bearings, designed to cope with support stresses on the shaft as well as friction were more than ball or roller bearings designed, without an integral shaft, to convert sliding friction into rolling friction, and were properly classifiable as parts of piston-type engines under TSUS item 660.52. Accordingly, the claim under TSUS item 660.52 was sustained. *Pollard Bearings Corporation*, C.D. 4619 149

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Certain conveyor belts and belting were classified as articles of iron or steel which are not more specifically provided for elsewhere in the tariff schedules, under item 657.20, Tariff Schedules of the United States, and were claimed to be more specifically provided for as angles, shapes, and sections, drilled, punched, or otherwise advanced, under TSUS item 609.84 or 609.86.
On the record presented, the court held that the importations were properly dutiable as classified, as articles of iron or steel which are not more specifically provided for elsewhere in the tariff schedules, under item 657.20. Accordingly, the protests were overruled. *Sandvik Steel, Inc.*, C.D. 4610 ---------- 78
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GAME MACHINES
A certain game called "Decision Football" was classified as other games played on boards of special design, under item 734.15, TSUS, as modified, and was claimed to be classifiable as game machines including games having mechanical controls for manipulating the action, under TSUS item 734.20. The parties filed cross-motions for summary judgment.
On the record presented and the legislative history, the court held that the imported merchandise came within the scope of item 734.20 as a game machine and as a game having mechanical controls for manipulating the action; that the provision for game machines and games having mechanical controls for manipulating the action, item 734.20, is more specific than the catch-all provision for other games played on boards of special design inasmuch as said item embraces requirements of classification more difficult to satisfy than item 734.15; and that the imported merchandise was properly classified under item 734.20. Accordingly, plaintiff's motion for summary judgment was granted and defendant's cross-motion for summary judgment was denied. *Coleco Industries, Inc.*, C.D. 4605 ---------- 22
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Certain foot switches were classified as switches under item 685.90, Tariff Schedules of the United States, and were claimed to be classifiable as parts of tape recorders, under TSUS item 685.40.
On the record presented, the court held that the imported foot switch was not more than a switch; that the presence of components in the foot switch other than the exact part which did the actual switching did not make the importation more than a switch since the other components were all directly related to the operation of the switch. Accordingly, plaintiff's claim was overruled. *Craig Corporation*, C.D. 4622 161
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THIURAM
A certain imported fungicide was classified as a mixture in part of a "benzenoid" product, under item 409.00, Tariff Schedules of the United States, and was claimed to be classifiable as a thiuram, under TSUS item 425.36.

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The court found that the presence in the imported fungicide of about three-quarters of a percent of a benzenoid wetting agent, which was not in itself fungicidal in nature, eased the dispersion of the powder in liquid and thus aided the spreading and penetration of the fungicide in wet spray form; and that since this wetting agent did not perform a fungicidal function, it should, consistent with its insignificant quantity, be treated in the typical *de minimis* fashion. Accordingly, plaintiff's motion for summary judgment was granted. *Aceto Chemical Co., Inc.*, C.D. 4625 167
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FUR FELTS
NONENUMERATED PRODUCTS BY SIMILITUDE
Certain merchandise described as fur felts was classified by similitude as an article most resembling as to use a particular enumerated article charged with duty, under item 798.00, Tariff Schedules of the United States, at the rate of 12% or 10% ad valorem derived from TSUS item 124.60, which provides for plates, mats, linings, strips, crosses, or similar forms. Plaintiff claimed that the merchandise was properly classifiable as hair felt, not specially provided for, under TSUS item 790.23.
On the record presented and a consideration of the pertinent legislative history, the court found that the plaintiff had failed to overcome the presumption of correctness attached to the classification under item 798.00 and to establish the correctness of its claimed classification under item 790.23. Accordingly, the plaintiff's claim was overruled and the action dismissed. *Eiseman-Ludmar Co., Inc.*, C.D. 4603 1
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GROUPED FILAMENTS
YARNS OF MAN-MADE FIBERS, OTHER
Certain yarn was classified as other yarns of man-made fibers with a twist of not over 20 turns per inch under item 310.01, Tariff Schedules of the United States, and was claimed to be classifiable as grouped filaments under TSUS item 309.31.
The court held that the imported yarn, whose filaments possessed a degree of twist known as producer's twist, present in an amount of approximately 0.4 turns per inch, was properly classified as other yarns of man-made fibers. Plaintiff's claim for classification as grouped filaments was rejected inasmuch as the filaments did not meet the requirement of headnote 3(e) of schedule 3, part 1, subpart E that they be substantially parallel and not twisted. Accordingly, the protest was overruled. *Intercontinental Fibres, Inc.*, C.D. 4617 135
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V. ELECTRICAL ARTICLES; RELATIVE SPECIFICITY (*see* MULTI-LITES, C.D. 4618).
ILLUMINATING ARTICLES
TAILLIGHTS, BICYCLE
Certain bicycle taillights were classified as illuminating articles under item 653.40, Tariff Schedules of the United States, and were claimed to be classifiable as electrical visual signalling devices under TSUS item 685.70, or, alternatively, as electrical articles, and electrical parts of articles, not specially provided for.
The court held that under item 653.40, an illuminating article contemplates one that contains a light which when operated lights up something other than itself, and that its lighting functions are necessary to the article's use; that the imported taillights light up not only the taillights, but also a portion of the bicycle and the roadway behind the bicycle and therefore were correctly classified as illuminating articles. Accordingly, the protests were overruled. *Oxford International Corporation*, C.D. 4608 58
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(*see* TELEVISION COILS, C.D. 4607).
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LACK OF; ESTOPPEL, EQUITABLE (*see* AMERICAN-FOREIGN GOODS RETURNED, C.D. 4604).
OF COURT
Proper party to action
Where certain merchandise was entered by a customhouse broker, no owner's declaration or superseding bond having been filed, and the protest filed by the importer and actual owner was duly ratified, it was held that the court had jurisdiction to determine the matter; that the appraisements admittedly being erroneous, the liquidations were void; and that the protests were, therefore, premature and, accordingly, were dismissed. *Baylis Brothers Co., etc.*, C.D. 4611 89
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MORE THAN MICROPHONES (*see* MICROPHONES, C.D. 4623).
PARTS OF TAPE RECORDERS
Certain microphones designed for use with tape recorders were classified as microphones under item 684.70, Tariff Schedules of the United States, and were claimed to be classifiable as parts of tape recorders, under TSUS item 685.40.
On the record presented, the court held that the presence of an "on-off" switch on the imported microphones did not make them more than microphones in that the switch was primarily an adjunct to the use of the microphone with a tape recorder and not a separate remote control device. Accordingly, plaintiff's claim was overruled. *Craig Corporation*, C.D. 4623 162
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MULTI-LITES

ELECTRICAL ARTICLES, NOT SPECIALLY PROVIDED FOR

Certain merchandise consisting of a lighting device, invoiced as "Multi-Lites" or as "Closet Lights," was classified as household articles, not specially provided for, of rubber or plastics, under item 772.15, Tariff Schedules of the United States, and was claimed to be classifiable as electrical articles, not specially provided for, under TSUS item 688.40. Cross-motions for summary judgment were filed by the parties, and defendant also filed a cross-motion to dismiss the action on jurisdictional grounds.

The court found that the term "household articles" represents a very broad class of articles, while the term "electrical articles" is less easily satisfied and held that the "Multi-Lites" were more specifically described by item 688.40 than by item 722.15, granted plaintiff's motion for summary judgment, and dismissed defendant's cross-motion for summary judgment.

The court found that four of the protests and the summons were filed on behalf of the importer but under a misnomer, that the court had jurisdiction of the action, and denied defendant's motion to dismiss the action. *Prestigeline* (*Div. of Weiman Co., Inc.*), C. D. 4618---------- 139

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RAILROAD ROLLING STOCK; STEEL ELLIPSOID SHAPES (*see* SHAPES, STEEL ELLIPSOID, C.D. 4612).

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(*see* SHOE DIE KNIFE STEEL, C.D. 4609).

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Certain steel ellipsoid shapes were classified as articles of iron or steel, not specially provided for, under item 657.20, Tariff Schedules of the United States. Alternatively, defendant claimed that they were properly classifiable as parts of railroad rolling stock under TSUS item 690.35. Plaintiff claimed that the importations were properly classifiable as angles, shapes, and sections, under TSUS item 609.80, or, alternatively, as plates of iron or steel, under TSUS item 690.13.
On the record presented, the court held that the imported steel ellipsoid shapes were properly classifiable as a shape, cold formed, and not otherwise advanced, under item 609.80, and sustained this claim of plaintiff. *Sumitomo Shoji Chicago, Inc.*, C.D. 4612 — 94
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AND CONSTRUCTION KITS; MODELS AND CONSTRUCTION KITS, OTHER
Certain ship models and construction kits or sets containing prefabricated units for the assembly of ship models were classified as other models and construction kits, under item 737.15, Tariff Schedules of the United States. Plaintiff claimed that all the ship models were properly classifiable as ship models made to scale of the actual article at the ratio of 1 to 85 or smaller under TSUS item 737.07, and that the construction kits were properly classifiable as construction kits or sets with construction units prefabricated to precise scale of the actual article, under TSUS item 737.09.
Based upon the record presented, lexicographic definitions and the legislative history, the court held that the imported merchandise was properly classified as other models and construction kits under item 737.15. Accordingly, plaintiff's claims were overruled and the classification affirmed. *Hudson Shipping Co., Inc.*, C.D. 4606 — 26
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SHOE DIE KNIFE STEEL
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Certain shoe die knife steel was classified as articles of iron or steel which are not more specifically provided for elsewhere in the tariff schedules, under item 657.20, Tariff Schedules of the United States, and was claimed to be more specifically provided for as "angles, shapes, and sections," under TSUS item 609.84 or 609.88, depending upon the weight per linear foot.
On the record presented and the legislative history the court held that the imported merchandise, a material advanced beyond strip and dedicated to use in the manufacture of clicker dies, was a product which did not conform completely to the specifications for strip set forth in headnote 3(h), schedule 6, part 2, subpart B, and therefore fell within the definition of the term "angles, shapes, and sections" in headnote 3(j); and that such material was more specifically provided for under item 609.84 or item 609.88, depending upon the weight per linear foot, than under the basket provision in item 657.20 for articles of iron or steel not more specifically provided for elsewhere in the tariff schedules. Accordingly, the protests were sustained, *Sandvik Steel, Inc.*, C.D. 4600 — 68

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(*see* FOOT SWITCHES, C.D. 4622).
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Certain television antenna switches were classified as electrical switches under item 685.90, Tariff Schedules of the United States, and were claimed to be classifiable as parts of television reception apparatus under TSUS item 685.20.
On the record presented, the court held that the imported switches were not the type intended to be encompassed by item 685.90, since they were not used in power applications; and that, inasmuch as they were not switches within the scope of said item 685.90, they were consequently not governed by General Interpretative Rule 10(ij) of the tariff schedules. Accordingly, the claim of the plaintiff was sustained. *Rembrandt Electronics, Inc.*, C.D. 4613---------- 103
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Certain television coils were classified as inductors under item 682.60, Tariff Schedules of the United States, and were claimed to be classifiable as parts of television apparatus, under TSUS item 685.20.
Based upon the record presented, lexicographic authorities and the legislative history, the court held that plaintiff had failed to over-

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PROPER PARTY, PLAINTIFF NOT (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75–6).
ELECTRIC TOOTHBRUSHES (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).
ELECTRICAL ARTICLES AND ELECTRICAL PARTS OF ARTICLES, NOT SPECIALLY PROVIDED FOR
TOOTHBRUSHES, ELECTRIC (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).
SANTA CLAUS FIGURES; TOY FIGURES OF ANIMATE OBJECTS (EXCEPT DOLLS) (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).
VINYL REINDEER FIGURES; TOY FIGURES OF ANIMATE OBJECTS (EXCEPT DOLLS)
Certain inflatable vinyl reindeer and Santa Claus figures and sets were classified as other toy figures of animate objects (except dolls), not having a spring mechanism, not stuffed, and not wholly or almost wholly of metal, under item 737.40, Tariff Schedules of the United States, and were claimed to be classifiable as other Christmas ornaments of rubber or plastics, under TSUS item 772.97. Plaintiff's first motion for summary judgment was denied and plaintiff filed second motion for summary judgment in which it claimed that the merchandise in issue was similar in all material respects to the merchandise in issue in *Davis Products, Inc., Frank M. Chichester* v. *United States*, 59 Cust. Ct. 226, C.D. 3127 (1967).
The court noted that no sample of any of the importations in question had been offered by the plaintiff to support either the instant or the prior motion; that plaintiff had not offered any catalogue description or other identifying document; that much of the supporting affidavit offered by plaintiff was of a conclusory nature, and therefore the court was uninformed about the nature and essential characteristics of the importations. It was held that a genuine issue existed for a trial, namely, the identity of the involved importations, and, accordingly, plaintiff's second motion was denied with prejudice. *L. B. Watson Co., a/c Murphy Reir, Inc.*, C.R.D. 75–5 ---------- 185
JUDGE MAY PRESCRIBE PROCEDURE
RULE OF PROCEDURE, NO APPLICABLE (*see* MOTION TO STRIKE NOTICE OF TRIAL, C.R.D. 75–8).
JURISDICTION, LACK OF (*see* SUMMONS PREMATURELY FILED, C.R.D. 75–4).
LEGISLATIVE HISTORY
TARIFF CLASSIFICATION STUDY (1960), EXPLANATION AND BACKGROUND MATERIALS, SCHEDULE 6 (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).
MOTION
FOR REHEARING AND RECONSIDERATION OF ORDER (*see* SUMMONS PREMATURELY FILED, C.R.D. 75–4).
FOR SUMMARY JUDGMENT (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

MOTION—Continued Page
TO DISMISS FOR LACK OF PROSECUTION; PLAINTIFF NOT PROPER PARTY
Pursuant to rule 4.7(b)(1) of the court, defendant moved to dismiss two protests on the ground that plaintiff was not a proper party and had no standing to file the instant actions. Plaintiff filed an opposition and a cross-motion to change the plaintiff-corporate name from Hancock Gross Mfg., Inc. to Hancock-Gross, Inc., which cross-motion was opposed by the defendant.
On the record presented, the court held: (1) that the protests were signed by plaintiff's attorney on behalf of Davies, Turner, a customhouse broker, as well as Hancock-Gross, and consequently the protests must be considered as filed by both the nominal and ultimate consignees, and therefore there was no basis under rule 4.7(b)(1) for dismissal of the protests; and that the caption of these cases should hereafter include Davies, Turner & Co. as a party-plaintiff. (2) That defendant's contention that the court lacked jurisdiction of the protests because they were filed by Hancock Gross Mfg., Inc. rather than Hancock-Gross, Inc., was without merit because not only was there no showing that the different names referred to two different and separate companies, but it was undisputed that Hancock Gross Mfg., Inc. merely amended its name, and was one and the same corporate party as Hancock-Gross, Inc. Accordingly, defendant's motion to dismiss was denied and plaintiff's motion to change the name of the captioned plaintiff was granted. *Hancock Gross Mfg., Inc.*, C.R.D. 75-6 188
TO STRIKE NOTICE OF TRIAL; CLERK OF COURT TO FILE MOTION TO STRIKE NOTICE OF TRIAL, REFUSAL OF
The clerk of the court, acting under rule 17.1 of the rules of the court, refused to file defendant's motion to strike plaintiff's notice of trial on the ground that rule 9.1 provides only for an objection to a notice of trial in the form prescribed therein.
The court held that rule 9.1 does not adequately provide for objections to a notice of trial which go beyond disagreement as to the date or place of trial; that since defendant's objection was primarily that the notice of trial was a sham designed to circumvent a previous order of the court and avoid dismissal for lack of prosecution, a motion to strike was proper in that it allowed plaintiff to respond in defense of its notice of trial, lead directly to a full resolution of the issue involved and, in accordance with rule 1.1(b), was the correct procedure in this action. Accordingly, the clerk of the court was ordered to file defendant's motion to strike plaintiff's notice of trial. *International Electronics Corp.*, C.R.D. 75-8 199
NAME OF PLAINTIFF, CROSS-MOTION TO CHANGE (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75-6).
NOTICE OF TRIAL, MOTION TO STRIKE
REFUSAL BY CLERK OF COURT TO FILE MOTION TO STRIKE (*see* MOTION TO STRIKE NOTICE OF TRIAL, C.R.D. 75-8).
PARTS OF ELECTRIC TOOTHBRUSHES
UNFINISHED TOOTHBRUSHES (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75-7).
PLAINTIFF
CROSS-MOTION TO CHANGE NAME OF (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75-6).
NOT PROPER PARTY (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75-6).
PREMATURE FILING OF SUMMONS
PROTESTS, ABSENCE OF VALID DENIAL OF ORIGINAL (*see* SUMMONS PREMATURELY FILED, C.R.D. 75-4).

PROPER Page

NAMING OF CORPORATE PARTY IN PROTEST, CARELESSNESS IN; CORRECTION, TECHNICAL ERROR AMENABLE TO (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75–6).

PARTY, PLAINTIFF NOT; DISMISSAL FOR LACK OF PROSECUTION, MOTION FOR (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75–6).

PROTEST, CARELESSNESS IN PROPER NAMING OF CORPORATE PARTY IN

CORRECTION, TECHNICAL ERROR AMENABLE TO (*see* MOTION TO DISMISS FOR LACK OF PROSECUTION, C.R.D. 75–6).

PROTESTS, ABSENCE OF VALID DENIAL OF ORIGINAL

PREMATURE FILING OF SUMMONS (*see* SUMMONS PREMATURELY FILED, C.R.D. 75–4).

REFUSAL BY CLERK OF COURT TO FILE MOTION TO STRIKE

NOTICE OF TRIAL, MOTION TO STRIKE (*see* MOTION TO STRIKE NOTICE OF TRIAL, C.R.D. 75–8).

REHEARING AND RECONSIDERATION OF ORDER, MOTION FOR (*see* SUMMONS PREMATURELY FILED, C.R.D. 75–4).

REINDEER FIGURES, INFLATABLE VINYL

CHRISTMAS ORNAMENTS OF RUBBER OR PLASTICS, OTHER (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

RULE OF PROCEDURE, NO APPLICABLE

JUDGE MAY PRESCRIBE PROCEDURE (*see* MOTION TO STRIKE NOTICE OF TRIAL, C.R.D. 75–8).

SANTA CLAUS FIGURES, INFLATABLE

CHRISTMAS ORNAMENTS OF RUBBER OR PLASTICS, OTHER (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

SUMMARY JUDGMENT, MOTION FOR

CROSS-MOTION FOR SUMMARY JUDGMENT

A certain power unit for an electric toothbrush was classified as toothbrushes, under item 750.40, Tariff Schedules of the United States, and was claimed to be classifiable as electrical articles and electrical parts of articles, not specially provided for. Plaintiff moved for summary judgment pursuant to rule 8.2 of the court, and defendant cross-moved for summary judgment pursuant to said rule.

The court found that the factual background presented to it was insufficient upon which to render a decision on the cross-motions; that neither a sample of the article in issue nor even a pictorial representation thereof had been submitted to the court; that the record presented left the court uninformed as to the facts concerning whether the imports were marketed in the trade and commerce of the United States as substantially complete toothbrushes, or whether the power units alone were commonly known as toothbrushes or parts of toothbrushes; and therefore a triable issue of fact exists relating to plaintiff's claim as well as to the Government's classification. Accordingly, the court dismissed the cross-motions without prejudice to whatever proceedings the parties may wish to pursue. *E. R. Squibb & Sons, Inc.*, C.R.D. 75–7 193

(*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

SUMMONS PREMATURELY FILED

JURISDICTION, LACK OF

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Pursuant to rule 12.1 of the rules of the court, plaintiff moved for a rehearing and reconsideration of a previous order of the court, and the question presented to the court was whether certain letters, dated May 5, 1971, of the Customs Service constituted notices of denial within the meaning of secs. 515(a) and 2631(a) so as to commence the running of the 180-day period of limitations within which to invoke the jurisdiction of the court by filing a summons.

The court held that the Bureau of Customs had not treated plaintiff's "old law" letter protests as protests against the classification of the merchandise within the purview of sec. 514, Tariff Act of 1930, which they were, but rather as sec. 502(c)(1) requests to reliquidate the entries to correct a "clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law"; that as the agency had made an administrative determination as to something which did not exist, namely, requests for reliquidation under sec. 520(c)(1), plaintiff's original protests were never acted upon and therefore they had neither been allowed nor disallowed as required by sec. 515(a); and that since the administrative responses of the letters were not effective notices of denial of plaintiff's protests within the meaning of secs. 515(a) and 2631(a), as amended, the running of the 180-day period for the filing of a summons did not commence, the summons was prematurely filed, and the court lacked jurisdiction over the involved entries. Accordingly, the motion for rehearing was denied and the previous order of the court was amended. *Colonna & Co., Inc.*, C.R.D. 75–4 ---------- 179

"TOOTH BRUSHES"

ELECTRIC TOOTHBRUSHES (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).

TOOTHBRUSHES, ELECTRIC

ELECTRICAL ARTICLES AND ELECTRICAL PARTS OF ARTICLES, NOT SPECIALLY PROVIDED FOR (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).

TOY FIGURES OF ANIMATE OBJECTS (EXCEPT DOLLS); INFLATABLE

SANTA CLAUS FIGURES (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

VINYL REINDEER FIGURES (*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–5).

UNFINISHED TOOTHBRUSHES

PARTS OF ELECTRIC TOOTHBRUSHES (*see* SUMMARY JUDGMENT, MOTION FOR, C.R.D. 75–7).